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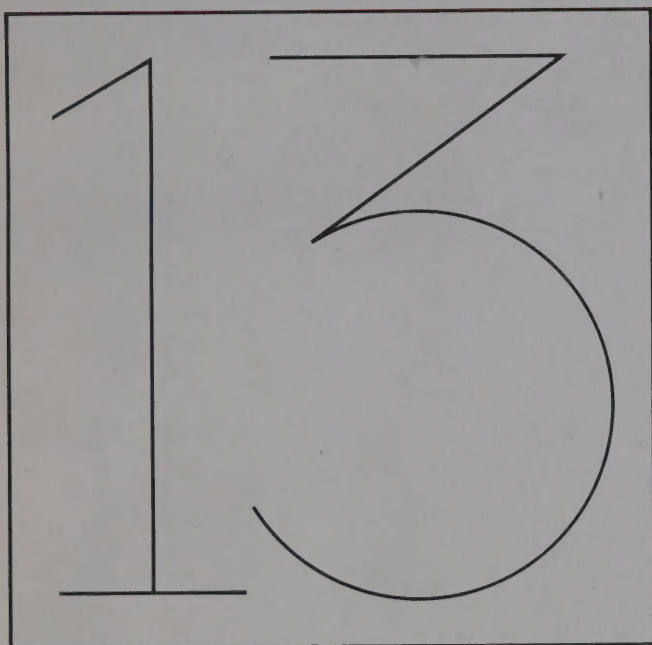








# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

Professor Bernard Adell has returned from sabbatical leave and will be available for arbitration cases, subject to his teaching and research schedule.

Professor R.J. Delisle has now returned from sabbatical leave, and is presently available for arbitration hearings.

Dean R.W. Ianni will be on leave from the University of Windsor until January 1984, and will be unable to take arbitrations.

Professor C.G. Simmons will be on sabbatical leave from Queen's University until June 1984, and will not be available to take arbitrations.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of May and June, 1983. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Discharge of probationary employee — employer given exclusive right to discharge probationers "notwithstanding any other provision"; discharge not creating a "difference"; grievance not arbitrable. *Re North York Hydro Electric Commission & C.U.P.E., Loc. 11; Christensen grievance*, June 28, 1983. Knopf — 10 pages. (1)\*†

Employer applying for a s.45 arbitration after submitting name of nominee to association — board of arbitration not constituted or seized of jurisdiction; arbitrable by s.45 arbitrator. *Re Victoria Hospital Corporation & O.N.A.; group grievance*, June 16, 1983. R.J. Roberts — 9 pages. (2)†



### Bargaining Unit

Membership: scope clause including employees engaged in operation of bar business on first floor of building — grievor as custodian of building not included; grievance dismissed. *Re U.A.W., Loc. 27 & R.W.D.S.U., Loc. 448; Harrison grievance*, June 8, 1983. Gorsky — 7 pages. (3)†

### Bereavement Leave

Timing — not limited to three days immediately following death; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; Kelly grievance*, June 16, 1983. P. Picher — 11 pages. (4)

### Call-In Pay

Calculation — applicable rate overtime, not straight time; grievance allowed. *Re National Arts Centre Corporation & International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Loc. 471; group grievance*, June 11, 1983. Kates — 13 pages. (5)

### Classification

Assignment to an employee the function of assessing deficiency reports on a full-time basis removes employee from classification as mechanical maintainer; grievance allowed. *Re Ontario Hydro & Ontario Hydro Employees, Loc. 1000; union grievance*, June 8, 1983. Majority: Teplitsky, Lewis; dissent: Abbott — 8 pages. (6)

Higher rate claimed — grievor did not establish capability to perform principal functions of higher job as set out in agreement; grievance dismissed. *Re Court Industries Co. Ltd. & I.A.M., Loc. 268; Scott grievance*, June 28, 1983. Devlin — 10 pages. (7)†

New classification created replacing two former classifications — bad faith alleged — not established; grievance dismissed. *Re Inco Metals Company and U.S.W.A., Loc. 6500; union grievance*, June 14, 1983. Majority: Gorsky, Kort; dissent: Seguin — 21 pages. (8)

Pay of higher classification claimed — tradesman assigned to observe contractor working around hydro cable; not responsible for work done; not constituting supervision; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees, Loc. 1000; Westbrook grievance*, May 30, 1983. P. Picher, McHenry, Lewis — 16 pages. (9)

Truck drivers performing new computer inventory tasks on loads delivered — simple, minor tasks not payable at higher rate; grievance dismissed. *Re Chrysler Canada & U.A.W., Loc. 444; union grievance*, June 2, 1983. Kennedy — 8 pages. (10)

Work of higher-rated classification claimed — assistant paymaster performing principal duties of paymaster in her absence; grievance allowed. *Re Timmins, Corporation of City of, & C.U.P.E., Loc. 434; Comisso et al grievance*, June 20, 1983. Dunn, Rukavina, Farrell — 5 pages. (11)

### Collective Agreement

Agreement between union and employers' organization — letter to union that it is no longer a member of organization sufficient to satisfy requirements of s.51(2) of *Labour Relations Act*; employer not bound; grievances dismissed. *Re London Sandblasting & International Brotherhood of Painters and Allied Trades et al; union grievances*, June 9, 1983. Majority: Franks, Sargeant; dissent: Pollit — 19 pages. (12)

Lack of consensus alleged — doctrine of mistake not applicable; grievors entitled to increments flowing from movement through salary scales; grievance allowed. *Re Hamilton Medical Laboratories and County Medical Laboratory & O.P.S.E.U.; group grievance*, June 15, 1983. Springate — 40 pages. (13)\*

### Contracting Out

Replacement of parking-control officers who were members of bargaining unit with employees of company on contract with employer — conditions of contract not amounting to effective control; grievance dismissed. *Re Peterborough, Corporation of City of, & C.U.P.E., Loc. 126; group grievance*, June 15, 1983. Majority: McLaren, Jackson; dissent: Edwards — 16 pages. (14)

### Damages

Compensation after reinstatement from discharge — employer obligated only to pay premiums, not long-term disability payments, grievor delaying return to work after he was fit; compensation denied. *Re Rexwood Products Ltd. & Lumber and Sawmill Workers, Loc. 2995; Godmaire grievance*, June 10, 1983. Majority: O'Connor, Wadge; dissent: Fyshe — 12 pages. (15)

Improper denial of promotion alleged — grievor quit shortly after; resignation not reasonably foreseeable; reinstatement neither appropriate nor within jurisdiction. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees, Loc. 1000; Latimer grievance*, June 2, 1983. Springate, McHenry, McCullough — 23 pages. (16)

### Demotion

Disciplinary demotion for unsafe operation of boom truck — not as serious as initially thought — previous record not considered at time of demotion; written reprimand substituted. *Re Lundy Steel (Ivaco Ltd.) & U.S.W.A., Loc. 4140; Foster grievance*, June 3, 1983. Majority: R.J. Roberts, Ciolifi; dissent: Yeo; addendum: Roberts — 12 pages. (17)

### Discharge

Absenteeism — jail sentence preventing regular attendance at work — not an emergency entitling grievor to leave of absence; company accommodated by treating first three days of absence as floating holidays — refusal to grant leave reasonable; grievance dismissed. *Re Kimberly-Clark of Canada Limited & United Paperworkers, Loc. 655; Dumas grievance*, April 14, 1983. Majority: O'Shea, Filion; dissent: Hay — 17 pages. (18)\*

Absenteeism — reinstatement conditional upon absenteeism not exceeding plant average — back problems recurring, absenteeism rate more than double plant average; grievance dismissed. *Re Canadian Appliance Manufacturing Company Limited & U.S.W.A., Loc. 3129; Bellisario grievance*, June 7, 1983. O'Shea — 9 pages. (19)

Absenteeism because of disability — employer may terminate where employee's right to long-term disability payments is unlimited; grievance dismissed. *Re University of Windsor & United Plant Guard Workers, Loc. 1958; Maedel grievance*, May 31, 1983. Samuels — 10 pages. (20)

Absenteeism (both innocent and allegedly culpable) — allegation that grievor faked industrial accident not established — grievor not advised that further absenteeism not acceptable before discharge; grievance allowed. *Re Canadian Liquid Air Ltd. & U.S.W.A., Loc. 6363; individual grievance*, June 9, 1983. Knopf — 17 pages. (21)†

Alcoholism: previous conditional reinstatement by settlement, grievor removed from treatment centre for reasons unrelated to alcohol use — not just cause for discharge, grievor given choice of damages or conditional re-instatement on leave of absence. *Re Air Canada & I.A.M.; Lindsay grievance*, May 18, 1983. Swan — 18 pages. (22)

Assault upon another employee — poor past record; grievance dismissed. *Re Gray Coach Lines Limited & A.T.U., Loc. 113; lafrate grievance*, June 23, 1983. Majority: Carrothers, Scott; dissent: Beaulieu — 8 pages. (23)



Assault upon security officer protecting company property during strike; McDonald, Hammond grievances allowed in part; Keating grievance dismissed. *Re Domtar Packaging & Canadian Paperworkers, Loc. 595; Hammond, McDonald and Keating grievances*, June 23, 1983. Majority: Burkett, Brady; dissent: Plaxton — 19 pages. (24)

Careless driving — prior record of accidents and lateness considered; reinstatement on extended probation without compensation. *Re WMI Waste Management of Canada Inc. & Teamsters Loc. 419; Green grievance*, June 14, 1983. O'Connor — 6 pages. (25)†

Carelessness established — discussion of incident between union and employer satisfied agreement; grievance dismissed. *Re Charterways Transportation Ltd. & Canadian Brotherhood of Railway, Transport and General Workers, Loc. 308; McIntyre grievance*, June 14, 1983. Lerner — 19 pages. (26)†

Careless work: second incident — grievor's five-year seniority, otherwise good record and admission of fault considered; reinstatement without compensation. *Re Canadian Racing Plate Co. Ltd. & Teamsters Chemical, Energy and Allied Workers, Loc. 2175; Welsh grievance*, June 9, 1983. Devlin — 15 pages. (27)†

Criminal convictions: possession of stolen goods and narcotics, previous record including trafficking in narcotics, school caretaker in close contact with students; grievance dismissed. *Re Hamilton Board of Education & C.U.P.E., Loc. 1344; Culp grievance*, June 14, 1983. O'Connor — 11 pages. (28)†

Culminating incident: driving company truck while driving licence suspended — grievor failed to report suspension, insubordination, poor past record; grievance dismissed. *Re Jordan and Ste-Michelle Cellars Ltd. & United Brewery Workers, Loc. 472; Fagan grievance*, June 16, 1983. McLaren — 11 pages. (29)

Culminating incident: minor instance of poor judgment — previous incidents relied upon never recorded or brought to grievor's attention; written warning substituted. *Re Scarborough, Corporation of Borough of, & C.U.P.E., Durnall grievance*, June 17, 1983. Kruger — 4 pages. (30)†

Deliberate restriction of production alleged — grievor responsible for allowing slag build-up on equipment causing improper functioning, poor past record; grievance dismissed. *Re Armstrong, S.A., Limited & U.S.W.A.; Genereaux grievance*, May 31, 1983. O'Shea — 18 pages. (31)

Dishonesty — inducing kickbacks and other favours in return for promises of increased business to outside carriers; discharge appropriate despite twenty-four years seniority. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Loc. 4509; Lavallee grievance*, June 10, 1983. Davis — 29 pages. (32)†

Effective date: notice of termination received by grievor during probationary period but grievor required to work beyond probationary period to effective date of release — standard of review for a seniority employee applicable; interim award. *Re Canada Post Corporation & C.U.P.W.; Stepniwski grievance*, June 14, 1983. P. Picher — 11 pages. (33)\*

Failure to punch time clock when leaving building — rule necessary for security; culminating incident; grievance dismissed. *Re Schenker Warehousing & United Brewery Workers, Loc. 304; Domingo grievance*, June 3, 1983. Majority: Franks, Sergeant; dissent: Tanner — 9 pages. (34)

Fitness to perform work — evidence supports company conclusion that there was no work that grievor able and physically fit to perform; grievance dismissed. *Re Tend-R-Fresh Plant of United Co-Operatives of Ontario & U.F.C.W.; Branco grievance*, May 30, 1983. Davis — 29 pages. (35)†

Insubordination: leaving work in face of direct order not to; grievance dismissed. *Re Weston Bakeries Ltd. & Milk and Bread Drivers, Loc. 647; Alvino grievance*, June 3, 1983. O'Shea — 13 pages. (36)

Insubordination: refusal to do work assigned — decision to discharge made without ascertaining that work partially performed despite refusal; reinstatement without compensation. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Loc. 5595; Martone grievance*, June 13, 1983. Verity — 10 pages. (37)†

Insubordination: refusing orders to perform work more carefully; offensive, insubordinate language to supervisors — threat to supervisor — poor record; grievance dismissed. *Re Inco Metals Company & U.S.W.A., Loc. 6500; Chamberlain grievance*, May 31, 1983. Majority: Weatherill, Devlin; dissent: Sheppard — 12 pages. (38)

Physical abuse of patient alleged — incident established — psychiatric evidence of psychopathy used on issues of credibility and suitability for employment; grievance dismissed. *Re Shaver Hospital for Chest Diseases & C.U.P.E., Loc. 1742; Gadsby grievance*, June 16, 1983. Majority: Kennedy, Weier; dissent: Bosnich — 29 pages. (39)

Probationary employee — culpability for accidents established, employer's standards are reasonable overall; grievance dismissed. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Loc. 279; Bedard grievance*, June 16, 1983. Majority: Abbott, Harnden; addendum: Harnden; dissent: Emond — 32 pages. (40)

Sexual assault upon student alleged — not established on the evidence; grievance allowed. *Re Toronto, Metropolitan Separate School Board & C.U.P.E., Loc. 1280; Rando grievance*, June 22, 1983. Kennedy — 28 pages. (41)†

Tampering with company property causing losses alleged — not established on evidence adduced; grievance allowed. *Re Kendall Canada & U.S.W.A., Loc. 8505; Persaud grievance*, June 6, 1983. Kennedy — 12 pages. (42)†

Theft — full oil drums stolen on several occasions, mitigation not appropriate despite thirty years seniority; grievance dismissed. *Re Du Pont Canada Inc., Kingston Works, & Kingston Independent Nylon Workers; L'Oiseau grievance*, May 13, 1983. Majority: Swan, Werry; dissent: Paliare — 15 pages. (43)\*

Theft: waiter and bartender bypassing cash register — employer's evidence preferred; grievances dismissed. *Re Gasworks Tavern & International Beverage Dispensers and Bartenders, Loc. 280; Lococo and Max grievances*, June 24, 1983. Davis — 10 pages. (44)†

Theft of groceries from employer — good record over thirty years service — full confession at hearing; conditional reinstatement after four-month suspension. *Re Great Atlantic & Pacific Company of Canada & U.F.C.W., Locs. 175 and 633; Hubert grievance*, June 24, 1983. Kruger — 8 pages. (45)\*†

#### Discipline

Absenteeism — letter sent to grievor reviewing absenteeism record, not disciplinary; grievance dismissed. *Re North-western General Hospital & O.N.A.; Coleman grievance*, April 21, 1983. Teplitsky, Mustard, McIntyre — 6 pages. (46)



Abusive language and threats to foreman alleged — incident initiated by foreman, conduct not meriting discipline; grievance allowed. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43; Tarantino grievance*, June 10, 1983. Majority: Samuels, Tate; dissent: Milks; addendum: Tate — 16 pages. (47)

Careless procedure — damage to machine resulting — bad judgment — previous unrelated record not considered; three and one-half days suspension reduced to written warning. *Re Alcan Canada Foils & Metal Foil Workers, Loc. 236424; Henshall grievance*, June 3, 1983. Wilson — 10 pages. (48)†

Discriminatory remarks to fellow employee — provocation; grievance allowed. *Re VS Services Ltd. & Workers of Queen Elizabeth Hospital; Moss grievance*, June 21, 1983. Burkett — 9 pages. (49)

Failure to follow procedure for reporting absence — grievor notified employer to the extent possible in circumstances; discriminatory treatment of grievor; grievance allowed. *Re Lakehead University & S.E.U., Loc. 268; Albert grievance*, June 6, 1983. Aggarwal — 25 pages. (50)†

Failure to report for work — on previous five-day suspension, grievor given incorrect early return date, failure to report on that date not open to discipline; grievance allowed. *Re Toronto, City of, & C.U.P.E., Loc. 43; Bartlett grievance*, June 13, 1983. Gorsky — 7 pages. (51)†

Insubordination alleged — evidence of union witnesses preferred over employer witness, incidents not established; grievance allowed. *Re Niagara Regional Health Unit Board of Health & C.U.P.E., Loc. 1757; Tallman grievance*, June 15, 1983. Houston — 9 pages. (52)†

Insubordination: refusal to perform work assigned — no warning of consequences for refusal; warning substituted. *Re York, Corporation of Borough of, & C.U.P.E., Loc. 10; Kitchener grievance*, May 19, 1983. McKechnie — 8 pages. (53)†

Insufficient production and absences from work place alleged — established in part; remainder explained as discrimination against grievor, a union steward; grievances allowed in part. *Re Haley Industries Ltd. & U.S.W.A., Loc. 4820; Bruce grievances*, June 15, 1983. Fraser — 15 pages. (54)†

Negligent driving alleged — grievor drove truck into ditch to avoid oncoming car, not negligence, but should have reacted sooner; one-week suspension reduced to written warning. *Re Molson's Brewery (Ontario) Ltd. & United Brewery Workers, Loc. 306; Sage grievance*, June 7, 1983. Sheppard — 9 pages. (55)†

Theft of gasoline — mitigating factors: twenty-nine years seniority; taken out of necessity, voluntarily admitted other occurrences; three-month suspension varied to one month. *Re Kent, Corporation of County of, & O.P.S.E.U., Loc. 132; Maure grievance*, June 7, 1983. Brent, Nagle, Robbins — 10 pages. (56)\*

Unsatisfactory teaching — assessment reasonable — claims of bias rejected — procedural defects, including early failure to consider grievor's comments; full withholding of merit increase changed to half withholding. *Re University of Ottawa & Association of Professors of University of Ottawa; Koerner grievance*, June 20, 1983. Kruger, Campbell, Wardhaugh — 80 pages. (57)

## Evidence

Admissibility of accident record in discharge grievance: agreement requiring all infractions removed from record after one year — if contrary practice, union not aware of it, no waiver where union first objects at hearing; preliminary objection allowed. *Re International Carriers Ltd. & Teamsters Locs. 141, 879, 880, 938; MacVicar grievance*, June 2, 1983. Majority: Saltman, Doe; dissent to follow: Burnell — 16 pages. (58)

## Grievance Procedure

Policy grievance initiated at step 3 — date of filing not deemed to be retroactive to theoretical filing at step 1 so as to include earlier holiday pay in damages. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; union policy grievance*, June 2, 1983. O'Shea — 7 pages. (59)

Timeliness: failure to apply in time to Ministry of Labour for appointment of s.44(4) arbitrator — employer makes *prima facie* case, union makes no submission; grievance not arbitrable. *Re Viking Pump Company of Canada Ltd. & U.A.W., Loc. 195; Liang grievance*, June 10, 1983. Brandt — 7 pages. (60)

Timeliness: formal grievance received several days out of time — earlier letter on same subject either constituting proper grievance or grounds to extend time limits; grievance timely. *Re Carrier Canada Ltd. & Sheet Metal Workers, Loc. 575; union policy grievance*, June 7, 1983. Egan — 14 pages. (61)†

## Health and Safety

Denim aprons supplied to material handlers — no evidence to establish aprons unsafe; grievance dismissed. *Re Mowat, W.J., Limited & Specialized Parcel Delivery and Handlers, Loc. 1681; union grievance*, June 1, 1983. Schiff — 4 pages. (62)†

## Holiday Pay

Qualifying days: notice that lay-off effective day after holiday ambiguous — employees working day after entitled to pay; grievances allowed in part. *Re Port Colborne Block Ltd. & U.S.W.A., Loc. 1177; Dmytrow et al grievances*, May 26, 1983. O'Connor, Wakunick, Yeo — 7 pages. (63)

Vacation replacements — grievors had worked qualifying days prior to holidays and then terminated, clearly hired only as vacation replacements; grievances dismissed. *Re Maple Leaf Mills Ltd. & U.F.C.W., Loc. 452P; Sesto and Acaster grievances*, June 7, 1983. Majority: Weatherill, Redford; dissent: Dayman — 7 pages. (64)

## Job Posting

Ineligibility when transferred to new position within six months of posting — grievor had transferred to different job shortly after return from maternity leave; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees, Loc. 1000; Bevilacqua grievance*, June 22, 1983. Arthurs, Lewis, McHenry; addendum: Lewis — 11 pages. (65)

Non-bargaining unit employee placed in vacant job on return from infant-care leave — job must be first available to bargaining-unit employees via posting; grievance allowed. *Re Toronto Board of Education, & C.U.P.E., Loc. 1325; union policy grievance*, June 16, 1983. Hinnegan — 11 pages. (66)

Vacancy alleged — not established, employer entitled to reassign to others duties performed by employee on maternity leave; grievance dismissed. *Re Laurentian Hospital & C.U.P.E., Loc. 161; policy grievance*, May 30, 1983. Betcherman — 6 pages. (67)†



### Lay-Off

Bumping: employee bumped down; employer, not wanting to lose incumbents, created new position at that level — bumping must continue down to labour pool and new position filled by promotion; rights declared. *Re Ivaco Rolling Mills & U.S.W.A., Loc. 7940; union grievance*, May 26, 1983. Abbott — 14 pages. (68)

Bumping rights — grievor less senior, less qualified to do the work available than employee retained; grievance dismissed. *Re Ferranti-Packard Transformers Ltd. & U.E., Loc. 525; Cutajar grievance*, June 7, 1983. Devlin — 26 pages. (69)†

Bumping rights — previous meanings and negotiating history considered; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; Horton grievance*, May 30, 1983. P. Picher — 25 pages. (70)

Improper lay-off alleged: not enough work in grievor's classification for full-time position — should have been recalled earlier; grievance allowed in part. *Re MacMillan Bloedel Industries Ltd. & International Woodworkers, Loc. 2-1000; Bucholtz grievance*, June 24, 1983. Weatherill, Smiley, Winkler — 7 pages. (71)

Part-time jobs reorganized into full-time bargaining unit; student incumbents unable to take new jobs — constitutes lay-off with resulting recall rights; grievance allowed. *Re Nel-Gor Castle Nursing Home & London and District Service Workers, Loc. 220; Kloot and Pressello grievance*, May 27, 1983. Swan, McComb, Switzman — 13 pages. (72)

Qualifications — employees retained more senior and qualified; grievances dismissed. *Re Babcock and Wilcox Canada Limited & U.S.W.A., Loc. 2859; group grievance*, June 20, 1983. Majority: O'Shea, Simpson; dissent: Wilton — 12 pages. (73)

Qualifications — employer should have investigated grievor's qualifications more fully but grievor did not discharge onus of proving qualifications; grievance dismissed. *Re Joy Manufacturing Company (Canada) Ltd. & U.S.W.A., Loc. 2871; Jerabek grievance*, June 27, 1983. Barton — 10 pages. (74)

Qualifications — grievor had some relief experience on assembly-line job desired; ability to work at full speed not essential but grievor still not qualified; other opportunities to gain experience considered; grievance dismissed. *Re Fleming, S.W., Ltd. & Sheet Metal Workers, Loc. 540; Bouchard grievance*, June 9, 1983. McKechnie — 16 pages. (75)†

Qualifications — grievor lacking skill and experience for requisite work — not entitled to training; grievance dismissed. *Re Domglas Ltd. & United Glass and Ceramic Workers, Loc. 203; Geoghagen grievance*, June 16, 1983. Majority: Kennedy, Smith; dissent: Ferguson — 13 pages. (76)

Qualifications — grievor properly demoted, then laid-off; not "presently possessed" of skills required to bump junior incumbents; grievance dismissed. *Re National Steel Car Ltd. & U.S.W.A., Loc. 7135; Murie grievance*, June 9, 1983. McKechnie — 14 pages. (77)†

Qualifications established by grievor — employer not establishing that its judgment that he was not relatively equal was not arbitrary; grievance allowed. *Re Shaw-Almex Industries Ltd. & U.S.W.A., Loc. 13704; Bottrell grievance*, June 13, 1983. Hinnegan — 8 pages. (78)

### Overtime

Distribution to those normally performing the work — grievors performing work in past only when others unavailable; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; Myers et al grievance*, June 6, 1983. O'Shea — 10 pages. (79)

Entitlement — company assigned overtime work to an employee not eligible but grievor working regular shift at same time and not eligible; declarations issued; grievance allowed in part. *Re Great Atlantic & Pacific Company of Canada Limited & R.W.D.S.U., Loc. 414; Jenner grievance*, May 31, 1983. Little, Baldwin, Dahmer — 10 pages. (80)

Entitlement — employees working with outside contractor beyond normal working day entitled to be offered overtime opportunity; grievances allowed. *Re Sherman Mine, Cliffs of Canada Limited, Manager, & U.S.W.A.; Swann and Turcotte grievances*, June 7, 1983. Black — 7 pages. (81)†

### Overtime Pay

Entitlement — grievors working on Sunday and paid appropriate premium not entitled to overtime for work on following Friday — Monday commences work week; grievance dismissed. *Re Molson's Brewery (Ontario) Limited & United Brewery Workers, Loc. 304; group grievance*, June 13, 1983. Weatherill — 9 pages. (82)

Entitlement — travel time outside of normally scheduled working hours payable at straight time; grievance dismissed. *Re Bell Canada & Communications Workers; Burnett grievance*, June 13, 1983. Majority: Springate, Filion; dissent: Switzman — 10 pages. (83)

### Premium Pay

Call out before regular work hours — payment for meal break according to call-out provisions, not overtime provisions — paid travel time not constituting time "worked"; grievances dismissed. *Re Windsor Utilities Commission & I.B.E.W., Loc. 636; Bunney and Platt grievances*, June 16, 1983. Black — 9 pages. (84)†

Change of work schedule — failure to give proper notice — grievor required to work shift prior to his regular tour of duty — overtime and premium payable; grievance allowed. *Re Bushnell Communications Limited, CJOH-TV, & N.A.B.E.T.; Deriger grievance*, June 11, 1983. Kates — 12 pages. (85)

### Probationary Employees

Newly-promoted employees — different meaning of probationary; settlement reached. *Re Thunder Bay, Corporation of City of, (Home for the Aged) & O.N.A.; union policy grievance*, June 13, 1983. Aggarwal, Holt, Robbins — 7 pages. (86)

### Professional Employees

Membership in Association of Professional Engineers required — employer bound to pay fees; grievance allowed. *Re Atomic Energy of Canada Ltd. & Society of Professional Engineers and Associates; union policy grievance*, May 31, 1983. Kennedy, Sanderson, Posen — 8 pages. (87)

### Promotion

Discriminatory promotion alleged — training course given to junior employee — employer did not know of future vacancy, grievor did not respond to job posting; grievance dismissed. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Adams grievance*, June 27, 1983. Devlin — 17 pages. (88)



Qualifications — grievance by junior employee alleging superior qualifications to senior incumbent — full and fair consideration of grievor's qualifications established; grievance dismissed. *Re Northwestern General Hospital & S.E.U., Loc. 204; policy grievance*, June 14, 1983. Majority: Carter, Mustard; dissent: Lewis — 8 pages. (89)

Qualifications — grievor had educational qualifications and previous temporary experience on the job; previous performance not meeting requirement of reliability; grievance dismissed. *Re Computing Devices Company & Employees' Association, Computing Devices Company; Rintoul grievance*, May 31, 1983. Majority: Carter, Green; dissent in part: Walsh — 10 pages. (90)

Qualifications — grievor not even granted an interview because of previous low check-out results; no consideration given to previous experience in the job; matter referred back to parties for reconsideration. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees', Loc. 1000; Latimer grievance*. See (16), *supra*. (91)

Qualifications — grievor not qualified; no evidence to support estoppel to prevent employer from hiring outside; grievance dismissed. *Re Sidbec-Dosco Inc. Etobicoke Works & U.S.W.A., Loc. 5927; Barton grievance*, June 8, 1983. Teplitsky — 4 pages. (92)

Arbitrariness alleged — employer's evaluation of incumbent's related experience questioned and employer's failure to contact grievor's supervisor — not established; grievance dismissed. *Re Toronto, Metropolitan, Association for the Mentally Retarded, & C.U.P.E., Loc. 2191; Vouden grievance*, April 29, 1983. Knopf — 20 pages. (93)†

Qualifications — "already possesses the necessary qualifications" does not mean previous experience necessary; grievor qualified; job awarded as other applicants not bargaining-unit members. *Re Hamilton Civic Hospitals & C.U.P.E., Loc. 794; McNicol grievance*, May 13, 1983. Hunter — 12 pages. (94)†

Qualifications — competitive clause; grievor's experience ten years old, not relatively equal; grievance dismissed. *Re Stelco Inc. & U.S.W.A., Loc. 1005; Kellner grievance*, March 29, 1983. Rayner, Marshall, Kenney — 7 pages. (95)

Qualifications — grievor not equal to incumbent, although more senior; grievance dismissed. *Re East York, Corporation of Borough of, & C.U.P.E., Loc. 114; Teal grievance*, May 12, 1983. Kruger — 10 pages. (96)†

Qualifications — incumbent selected was senior, qualified employee; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; policy grievance*, May 4, 1983. Majority: H. Brown, White; dissent: Spaxman — 20 pages. (97)

Qualifications for job of heavy equipment operator — job posting contained reasonable requirement of good safety record which grievor could not meet; grievance dismissed. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees Union, Loc. 43; Malone grievance*, April 27, 1983. Saltman — 18 pages. (98)

Qualifications for promotion to supervisory job — comparisons made on reasonable basis — significant differences between grievor and successful applicants; grievance dismissed. *Re Ontario Hydro & Ontario Hydro Employees, Loc. 1000; Scott grievance*, April 30, 1983. Majority: H. Brown, Abbott; dissent: McCullough — 28 pages. (99)

Trial period — grievor denied right to apply for opportunity to demonstrate skill and ability — matter referred back to parties for consideration; grievance allowed. *Re Consumers Gas Company & National Union of Independent Gas Workers, Loc. 513; Woerffel grievance*, March 18, 1983. Palmer, Healy, Lewis — 11 pages. (100)

#### Recall

Inability to perform available work — company reasonable in concluding that grievor precluded from operating mechanical equipment because of his epilepsy; grievance dismissed. *Re Barnes, William R., Co., Limited & Teamsters Loc. 879; Watson grievance*, May 30, 1983. Lerner — 39 pages. (101)†

Notification — registered letter not sent as required; grievance allowed. *Re Chromasco Ltd., Haley, Ontario & U.S.W.A., Loc. 4632; Pilon grievance*, April 26, 1983. Roach — 8 pages. (102)†

Personal notice of recall opportunity — not required when grievor said he only wanted recall to original job; bumping available only at time of lay-off; grievance dismissed. *Re Armstrong, S.A., Ltd. & U.S.W.A., Loc. 6917; Kang grievance*, May 16, 1983. Davis — 13 pages. (103)†

Qualifications — grievor had minimal experience at job in question — not enough to meet "normal requirements of the job with no additional training"; grievance dismissed. *Re Chromasco Ltd. Haley, Ontario & U.S.W.A., Loc. 4632; Hansma grievance*, June 16, 1983. Roach — 7 pages. (104)†

Qualifications — grievor qualified to do all but minor portions of work, similar to junior employee actually recalled; grievance allowed. *Re Fannings' Launderers and Dry Cleaners Ltd. & Amalgamated Clothing and Textile Workers, Loc. 1575; Ferguson grievance*, May 31, 1983. McLaren, Gibbons, Davidson — 8 pages. (105)

Qualifications: "necessary skill and ability" — employer not entitled to consider whether grievor could immediately meet full production standards; grievance allowed. *Re Federal Pioneer Ltd. & U.E., Loc. 512; Liwag grievance*, June 13, 1983. R.J. Roberts — 8 pages. (106)†

Right to fill vacancy at bottom of other line of progression — vacancy may not be filled by employee on job while senior employee on lay-off; grievance allowed. *Re Lake Ontario Steel Co. Ltd. & U.S.W.A., Loc. 6571; Spencer grievance*, May 5, 1983. Willes — 8 pages. (107)†

Sufficiency of notice: requirement of service by certified mail — private courier used merely left notice in mail box — resulting delay causing lost seniority; requirement not met; grievance allowed, order to recall with compensation. *Re Hawker Siddeley Canada Inc. (Forestry Equipment Division) & I.A.M., Lodge 717; Montgomery grievance*, May 6, 1983. Kates — 13 pages. (108)

#### Reporting Pay

Inclement weather provision, heavy rain, freezing temperatures; senior employees retained for inside work — no lay-off; grievance dismissed. *Re Hamilton-Wentworth, Regional Municipality of, & C.U.P.E., Loc. 5; policy grievance*, May 30, 1983. Swan — 15 pages. (109)†

#### Scheduling of Work

Assignment of employees from regular shift to "off-shift" computed in a period of seven consecutive work days rather than in calendar week; grievances dismissed. *Re Allied Chemical & U.A.W., Loc. 89; Jariett, Herold, Beaudoin, Pare grievances*, April 12, 1983. Rayner — 6 pages. (110)



Change of schedule — effective to change day off to regular working day, sufficient notice given, no premium payable; grievance dismissed. *Re DuPont Canada Inc. & E.C.W.U., Loc. 28; Nixon grievance*, May 27, 1983. Emrich — 15 pages. (111)†

Change of schedule alleged — minor variation not amounting to change of work schedule; grievance dismissed. *Re Brampton, Corporation of City of, & A.T.U., Loc. 1573; policy grievance #1036*, April 1, 1983. Majority: Rayner, Filion; dissent: Morency — 12 pages. (112)

Inequitable work load alleged — reduction of development time and split summer vacations; inequity not established; grievance dismissed. *Re Lambton College & O.P.S.E.U.; Slack grievance*, May 24, 1983. Majority: Swinton, Shields, dissent: McManus — 14 pages. (113)

Preferred shift status claimed — individual contact pre-empted when collective agreement negotiated — in any case, status lost when grievor changed jobs; grievance dismissed. *Re Chicopee Manufacturing Ltd. & Chicopee Manufacturing Employees; Taranto grievance*, June 7, 1983. Rose — 11 pages. (114)†

Prerequisites to effecting change to schedule followed notice and consultation with union; grievance denied. *Re Canada Post Corporation & Public Service Alliance; policy grievance*, June 21, 1983. Kates — 14 pages. (115)

Reduction to four-day work week — brief discussion with union before implementation enough to meet requirement — earlier discussions considered; grievance dismissed. *Re Carrier Canada Ltd. & Sheet Metal Workers, Loc. 575; union policy grievance*. See (61), *supra*. (116)†

Regular work schedule changed to accommodate other employee's absence — agreement only stating regular shifts carried out where possible — past practice inconclusive; grievances dismissed. *Re Timmins, Corporation of City of, & C.U.P.E., Loc. 210; Anderson grievances*, June 17, 1983. Majority: Dunn, Caldwell; dissent: Sheppard — 8 pages. (117)

Scheduled shut down for two days at year end — practice of retaining grievor as sole employee during summer shut downs, does not entitle him to work at year end; grievance dismissed. *Re Gilbarco Canada Ltd. & Canadian Union of Golden Triangle Workers; Baker grievance*, April 28, 1983. Simmons — 8 pages. (118)

Shift cancelled without pay for emergency shut down — work or wages guaranteed only for continuous operations employees; grievance dismissed. *Re Domtar Fine Papers (Cornwall) & Canadian Paperworkers, Loc. 212; union grievance*, May 3, 1983. Majority: Little, Byers; dissent: Paxton — 12 pages. (119)

### Seniority

Calculation — employee terminated, rehired, then later reinstated to full seniority; proper date is at rehire. *Re Nacan Products Ltd. Toronto & E.C.W.U., Loc. 819; union grievance*, May 13, 1983. Palmer — 7 pages. (120)

Calculation — seniority is to date from commencement of employment and not from date of transfer from casual to permanent status; grievance allowed. *Re Parry Sound District General Hospital & S.E.U., Loc. 478; Tyler grievance*, May 10, 1983. Brunner, Baldwin, Ortlieb — 9 pages. (121)

Calculation — "service" refers only to time working within bargaining unit, not including time worked on previous service broken by termination or by transfer out of bargaining unit; grievances allowed. *Re Standard Brands Ltd. & U.F.C.W.U., Loc. 1182-4; union policy grievances*, May 13, 1983. O'Shea — 13 pages. (122)\*†

Supervisor returned to bargaining unit to avoid lay-off — no accumulation of seniority during absence from bargaining unit — grievor has more seniority; grievance allowed. *Re Chromasco Ltd., Haley, Ontario & U.S.W.A., Loc. 4632; Bateman grievance*, May 30, 1983. Roach — 13 pages. (123)†

Transfer out of and return to bargaining unit — extrinsic evidence inconclusive — entitled to all accumulated seniority within bargaining unit; grievance allowed. *Re Ferranti-Packard Transformers Ltd. & U.E., Loc. 525; policy grievance*, May 11, 1983. Majority: Teplitsky, Storie; dissent: Russell — 14 pages. (124)

### Sexual Harassment

Allegation against supervisor — not proven that alleged victims were members of bargaining unit, evidence inconclusive; grievance dismissed. *Re Richelieu Inn & Hotel, Restaurant and Cafeteria Employees, Loc. 75; union policy grievance*, June 24, 1983. Barton — 18 pages. (125)†

### Sick Leave

Entitlement: dental appointment — leave with pay for dental appointment applicable to duration of appointment and travel time only; grievance denied. *Re Carleton University & C.U.P.E., Loc. 910; Scott grievance*, May 12, 1983. Kates, Armstrong, Mitchell — 11 pages. (126)

Entitlement: grievor not disentitled from sick leave because of failure to produce medical certificate of fitness at termination of her maternity leave; grievance allowed. *Re Dearness Home (Corporation of City of London) & London and District Building Service Workers, Loc. 220; Fraleigh grievance*, May 12, 1983. Majority: Saltman, Lewis; dissent: Milks — 10 pages. (127)

### Technological Change

Computer project cancelled — "change" embracing reversals as well as improvements; grievances allowed. *Re Toronto, Metropolitan, Library Board & C.U.P.E., Loc. 1582; Haley and union policy grievances*, April 29, 1983. Majority: P. Picher, Robbins; dissent to follow: Perron — 27 pages. (128)

Introduction of automatic machine — grievor doing new work, although still paid at higher manual rate; found to be displaced as a direct result of automation; grievance allowed. *Re Kindred Industries Ltd. & Sheet Metal Workers, Loc. 540; Ladouceur grievance*, May 13, 1983. Devlin — 14 pages. (129)†

### Transfer

Assistant press operators assigned work of press operator during latter's lunch break — temporary transfer entitling grievors to rate of pay of press operator for work performed; grievance allowed. *Re Indalex, Division of Indal Limited, & U.S.W.A., Loc. 2729; policy grievance*, May 16, 1983. Betcherman — 7 pages. (130)

Lay-off alleged, not established — university has right to transfer employees within a classification when reducing number of jobs within a position in that classification; grievances dismissed. *Re York University & C.U.P.E., Loc. 1356; Messina and Comeau grievances*, May 4, 1983. Kruger — 8 pages. (131)†

Qualifications — impossible to fulfil and unnecessary at time of posting, unreasonable, grievor eligible for lateral transfer, no lower-rated employee applying, proposed settlement to grant transfer when possible not a bar; grievance allowed. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees, Loc. 1000; Breckon grievance*, May 20, 1983. Kates, Lewis, Chatland; addendum: Chatland — 16 pages. (132)



Temporary transfer — no requirement to consider seniority, refusal warranting formal warning; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Loc. 1915; Kassie grievance*, April 30, 1983. Dunn — 5 pages. (133)

### Union Rights

Employee representatives on committee to review coroner's report on fatality occurring in company operations — union has right to choose own members to sit on committee, but right to representation not denied — declaration that committee findings be nullified refused; grievance allowed in part. *Re Toronto Transit Commission & C.U.P.E., Loc. 2; policy grievance*, April 27, 1983. O'Connor — 6 pages. (134)†

### Wages

Application of *Inflation Restraint Act* — no merit increases after September 1, 1982 to bring salary over \$35,000 — general increases before that date — those otherwise entitled after date are now limited; grievance dismissed. *Re Peterborough County Board of Education & O.S.S.T.F., District 18; policy grievance*, May 31, 1983. Kennedy, Cazabon, Riddell — 9 pages. (135)\*

Court-time pay — witnesses at assault trial of fellow officer not in capacity of investigating officers — not entitled to court-time pay; grievances dismissed. *Re Colchester South Police Committee & Colchester South Police Association; Horoky and Moore grievances*, April 26, 1983. Samuels — 5 pages. (136)

Entitlement to trade allowance — grievor lacking requisite endorsement on certificate of qualification; grievance dismissed. *Re Denison Mines Limited & U.S.W.A.; Arsenault grievance*, May 25, 1983. Adams — 6 pages. (137)

Incentive pay — claim that production standard set too high — direction to select independent industrial engineer to review standard — his standard to be applied if lower. *Re Snap-On Tools of Canada Ltd. & U.S.W.A., Loc. 5483; group grievance*, June 15, 1983. Black — 6 pages. (138)†

Payment of indirect labour rate for incentive work improper once production standards assigned to job function, such work cannot be designated later as non-incentive work; grievance allowed. *Re Cooper Tool Group Limited & U.S.W.A., Loc. 6709; group grievance*, May 26, 1983. Black — 8 pages. (139)†

Responsibility allowance for position of assistant headship — grievors put on notice of one year to meet qualifications for continuation of allowance — qualifications met; grievances allowed. *Re Northumberland and Newcastle Board of Education & Northumberland and Newcastle Branch Affiliate O.S.S.T.F., District 44; Love and Sherry grievances*, June 21, 1983. Kates — 11 pages. (140)

Wage rate from another collective agreement incorporated as wage rate for second year — definition of levels as based on years of service with company (as opposed to years of experience) not also incorporated; grievance allowed. *Re Fleetwood Ambulance Service & O.P.S.E.U.; policy grievance*, April 28, 1983. Majority: McLaren, McManus; dissent: Klein — 10 pages. (141)

### Welfare Plans

Absence on long-term disability — entitled to vacation pay but fringe benefits no longer responsibility of employer; grievance allowed in part. *Re Ferranti-Packard Transformers Ltd. & U.E., Loc. 525; McCarthy grievance*, June 16, 1983. Devlin — 24 pages. (142)†

Sickness and accident benefits — company may demand release of medical information by employee as condition precedent to payment; grievance dismissed. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Loc. 112; policy grievance*, May 7, 1983. Rayner — 7 pages. (143)

### Work Assignment

Assignment of painting a boiler outside classification alleged — no proprietary right of grievor to job duties; grievance dismissed. *Re Queen Elizabeth Hospital & C.U.P.E., Loc. 1156; policy grievance*, June 7, 1983. O'Connor — 5 pages. (144)†

Assignment to lower classification disputed — disputed work not exclusively that of tool and die makers; grievances dismissed. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Loc. 112; Pauls, Duncan and Duncan grievances*, May 3, 1983. Gorsky — 12 pages. (145)

Bargaining-unit work shared by two part-time employees — assignment of such work on a part-time basis by excluded personnel contemplated by collective agreement; grievance allowed. *Re Atomic Energy of Canada Limited & O.P.E.I.U., Loc. 404; union grievance*, June 29, 1983. Majority: Weatherill, Sanderson; dissent: Kearney — 10 pages. (146)\*

Extra work (non-overtime) assigned to junior employee — no requirement to assign on basis of seniority; grievance dismissed. *Re Winco Restaurants Ltd. & Hotel and Restaurant Employees, Loc. 743; Buchanan grievance*, May 12, 1983. Lerner — 9 pages. (147)†

Job reorganization resulting in shrinkage of bargaining unit — some work "presently performed by members of bargaining unit" done by others — consideration of history of interest arbitration in interpreting agreement; grievances allowed in part. *Re Little's Nursing Home (Tecumseh) Ltd. & O.N.A.; Lozinski et al grievances*, May 10, 1983. Majority: R.J. Roberts, McIntyre; dissent: Pittl; concurring opinion to follow: McIntyre — 18 pages. (148)

Non-bargaining unit employees performing bargaining-unit work — prohibited only if resulting in reduction of overtime, regular hours of work or lay-off — not established; grievance dismissed. *Re Bakelite Thermosets Limited & United Rubber Workers, Loc. 380; policy grievance*, March 23, 1983. Majority: Rayner, Clark; dissent: Bruder — 8 pages. (149)

Performance of bargaining-unit work by management personnel during lay-off alleged — work by one for valid investigative purpose, work by other partly for inventory, partly clean-up; grievance allowed in part. *Re North American Steel Equipment Company Ltd. & U.S.W.A., Loc. 6662; Larose grievance*, May 5, 1983. Willes — 9 pages. (150)†

School caretaker assigned additional work at different location — no limitation on employer's right to adjust work to meet declining enrolment; not a new classification; grievances dismissed. *Re Ottawa Roman Catholic Separate School Board & Service and Commercial Employees, Loc. 272; union policy and Lachapelle grievances*, June 24, 1983. Kates — 18 pages. (151)

Use of sessional employees to perform ongoing teaching — agreement restricting sessional employees only as to duration of term, not type of work performed; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; union policy grievance*, May 6, 1983. Majority: Brent, Correll; dissent: McManus — 12 pages. (152)



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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

The following persons have successfully completed the Ministry of Labour's 1983 Arbitrator Development Programme and have been added to the panel of approved arbitrators:

Miss Anne Barrett, Barrister and Solicitor, 111 Elizabeth Street, 6th Floor, Toronto, Ontario, M5H 1R9; telephone: (416) 977-0858.

Dr. Jeffrey Gandz, Associate Professor, University of Western Ontario, London, Ontario, N6A 3K7; telephone: (519) 679-3340.

Miss Belinda Kirkwood, Barrister and Solicitor, P.O. Box 10, 1 First Canadian Place, Toronto, Ontario, M5X 1A2; telephone: (416) 360-8600.

Mr. Victor Solomatenko, Barrister and Solicitor, 101 Elmsthorpe Avenue, Toronto, Ontario, M5P 2L8; telephone: (416) 485-3031.



## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of September, 1983. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

### Arbitrability

Parties to submit grievances to board of arbitration according to agreement — agreement not a collective agreement; express language required to incorporate alternative procedure under s. 45 of Act; no consensus *ad idem* to substitute *ad hoc* sole arbitrator; sole arbitrator has no jurisdiction; proceedings terminated. *Re Metropolitan Toronto Apartment Builders Association & Toronto Building and Construction Trades Council, Loc. 1190 Carpenters and Joiners; union grievance*, Sept. 19, 1983. Davis — 6 pages. (1)

Quarterly attendance bonus — collective agreement expires before end of quarter — right to bonus not crystallized; grievance not arbitrable. *Re Rantex Brushes Incorporated & U.E., Loc. 542; group grievance*, Sept. 16, 1983. Davis — 6 pages. (2)†

### Bargaining Unit

Foremen — change of duties bringing employees within foreman classification; foremen excluded from bargaining unit; grievance dismissed. *Re Vagden Mills Limited & Amalgamated Clothing and Textile Workers & a group of employees; policy grievance*, Sept. 9, 1983. Davis — 15 pages. (3)†

Teachers seeking inclusion — teaching-school programme in institutional setting — not within ambit of *The School Boards and Teachers Collective Negotiations Act*; grievance dismissed. *Re York, Borough of, Board of Education & O.S.S.T.F., District 14; policy grievance*, Sept. 16, 1983. Majority: Kennedy, Baker; dissent: Knott — 25 pages. (4)

### Classification

Employees of higher classification junior to grievor paid at higher rate for same work — company had removed inequitable assignment after grievance; grievance allowed in part. *Re Bell Canada & Communications Workers; Spracklin grievance*, Sept. 8, 1983. Majority: Burkett, Churchill-Smith; dissent: Beaulieu — 12 pages. (5)

Job brought within bargaining unit — previous titles not relevant; job fitting more squarely with programmer; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; Dawdy grievance*, Aug. 30, 1983. Majority: Brent, Shuttleworth; dissent: Bounsall — 25 pages. (6)

New classification established — real and significant characteristics distinct from existing job classifications; grievance dismissed. *Re Grandview Industries Ltd. & International Molders and Allied Workers, Loc. 28; Sohail grievance*, Sept. 15, 1983. Gorsky — 13 pages. (7)

### Contracting Out

Customer pick-up alleged to be contracting out — not mutually agreed upon interpretation; grievance dismissed. *Re Coca-Cola Ltd. & United Brewery Workers; union grievance*, Sept. 20, 1983. Springate — 16 pages. (8)\*

Maintenance work — agreement violated by failure to call in grievor, but damage not proved; grievance allowed in part. *Re Firestone Canada Ltd. & United Rubber Workers, Loc. 113; Imrie grievance*, Sept. 27, 1983. Langille — 14 pages. (9)†

Hiring of temporary non-union painters — similar work done by union employees in past; grievance allowed. *Re Kirkland Lake, Corporation of Town of, & C.U.P.E., Loc. 26; policy grievance*, Aug. 31, 1983. Majority: Dunn, Turcotte; dissent: Ellies — 4 pages. (10)

### Damages

Breach-of-leave policy — only specific expenses in rectifying breach allowed; union not entitled to damages for loss of reputation as such damage not linked to clause breached; grievance allowed in part; supplementary award. *Re Ottawa Civic Hospital & C.U.P.E., Loc. 576; policy grievance*, Aug. 26, 1983. McLaren, Bentley, Lewis — 13 pages. (11)\*

Calculation of compensation — no deductions to be made for estimated absenteeism that would have occurred during period; no interest allowed; grievance allowed. *Re Cadbury Division, Whitby, & Teamsters Loc. 647; Ramirez grievance*, Sept. 6, 1983. Adams — 6 pages. (12)

### Demotion

Reversion to previous classification following poor probationary service — review record after promotion — grievor not entitled to a thirty-day period in which to improve the assessment; interim award. *Re Toronto Electric Commissioners & C.U.P.E., Loc. 1; Yanetta grievance*, Sept. 20, 1983. Knopf — 10 pages. (13)

### Discharge

Absenteeism — grievor suffering from knee injury and depression — grievor disliking job; not qualifying for long-term disability; grievance dismissed. *Re Ontario Hydro & Ontario Hydro Employees, Loc. 1000; Arendt grievance*, Sept. 8, 1983. Majority: Swinton, Allin; dissent: Lewis — 20 pages. (14)

Absenteeism arising from compensable injury — grievor unable to establish that she was able to perform other duties available in the plant; grievance dismissed. *Re United Carr Division of T.R.W. Canada Limited & U.A.W., Loc. 397; Hulak grievance*, Sept. 8, 1983. H. Brown — 10 pages. (15)

Breach of company's policies and theft alleged — grievor consumed products before paying for them; act does not demonstrate intent to steal; discharge motivated by allegations of theft; grievor had good work record, reliable; two-month suspension for breach of company policy substituted. *Re Loblaw's Limited & Commercial Workers, Loc. 486; Mulrooney grievance*, Sept. 24, 1983. Dunn — 7 pages. (16)

Culminating incident — careless work performance — previous incident of failure to perform work as assigned, other incidents stale-dated but company had relied upon them to justify penalty; reinstatement without compensation. *Re VS Services Limited (Food Management Services) & Workers of Queen Elizabeth Hospital; Ksenzovsky grievance*, Sept. 26, 1983. O'Shea — 11 pages. (17)

Culminating incident — delivery of wrong chemicals — previous incidents of careless behaviour; grievance dismissed. *Re Municipal Tank Lines & Teamsters, Loc. 880; Muxlow grievance*, Sept. 13, 1983. Majority: McLaren, Singleton; dissent: Laub — 9 pages. (18)



Culminating incident — leaving work station without permission — poor past record; progressive discipline applied; grievance dismissed. *Re Steel Company of Canada Inc., Hilton Works, & U.S.W.A., Loc. 1005; Bianco grievance*, Sept. 27, 1983. Majority: Burkett, Kenny; dissent: Marshall — 18 pages. (19)

Culminating incident — non-delivery of mails after repeated warnings and instructions — no explicable reasons for behavior; grievance dismissed. *Re Canada Post Corporation & Letter Carriers' Union; Wishart grievance*, Sept. 7, 1983. Jolliffe — 35 pages. (20)

Culminating incident — unauthorized absence — mitigating factors; grievor's conduct uncharacteristic; reinstatement without compensation ordered. *Re Alcan Products Ltd. (Kingston Works) & United Plant Guard Workers; Irwin grievance*, July 20, 1983. Majority: Swan, Nabi; dissent: Little — 14 pages. (21)

Culminating incident — unauthorized absence — mitigating factors; reason to expect attendance to improve; discharge varied to conditional reinstatement without compensation. *Re Victoria Hospital Corporation & London and District Service Workers, Loc. 220; Brill grievance*, Aug. 29, 1983. Majority: M. Picher, Lewis; dissent: MacLeod; addendum: Picher — 19 pages. (22)

Insubordination and abusive language — long-standing problem of inability to get along with others; grievance dismissed. *Re Toronto Cloak Manufacturers' Association (Wilbro division of Wilson's) & Toronto Cloakmakers, Dress and Sportswear Union, International Ladies Garment Workers, Locs. 14, 83 & 92; Bishop grievance*, Aug. 5, 1983. Swan — 10 pages. (23)

Tampering with mail alleged — legitimate interest of employer in deterrence — no mitigating factors; grievance dismissed. *Re Canada Post Corporation & C.U.P.W.; Brumpton grievance*, Sept. 8, 1983. Burkett — 15 pages. (24)

Theft — only secondary role in theft — personal mitigating circumstances; six-month suspension substituted. *Re Canada Post & C.U.P.W.; Yurcak grievance*, Sept. 22, 1983. Arthurs — 12 pages. (25)\*

Theft of company property — isolated incident; gravity of offense impressed on grievor; grievor unlikely to find alternate employment, lengthy seniority, satisfactory work record; reinstatement without compensation or benefits ordered. *Re MacMillan Bloedel Limited & Canadian Paperworkers, Loc. 7135; Lajeunesse grievance*, Sept. 16, 1983. Majority: McLaren, Paxton; dissent: Storie — 18 pages. (26)

Timeliness of discharge for theft — good reason for delay, no prejudice in the circumstances; mitigating circumstances despite grievors' denial of theft; three-month suspension substituted. *Re National Grocers Company Ltd. & Teamsters Loc. 419; Lemieux and Carnovale grievances*, Sept. 23, 1983. Langille — 23 pages. (27)\*†

Work performance unsatisfactory — agreement limits standard of review — employer's decision not made arbitrarily even though some allegations not substantiated; grievance dismissed. *Re Toronto Jewish Congress, United Jewish Welfare Fund, & C.U.P.E., Loc. 2063; Grosh grievance*, Sept. 23, 1983. Betcherman — 13 pages. (28)†

### Discipline

Absence from work station without authorization — found to be absent, not late in reporting back; company permitted to take employment record into account when assessing appropriate penalty; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Loc. 1967; Doyle grievance*, Aug. 29, 1983. H. Brown — 8 pages. (29)

Absence from work without permission — past practice of seeking permission; deduction of one-half day's pay for services not rendered and written reprimand justified; grievances dismissed. *Re Loyalist College of Applied Arts and Technology & O.P.S.E.U.; Conlon and Ryan grievances*, Sept. 21, 1983. Majority: Brent, Shields; dissent: Switzman — 8 pages. (30)

Absenteeism — failure to notify in accordance with company policy; no reasonable excuse for non-compliance; grievance denied. *Re Multifittings Limited & International Molders and Allied Workers, Loc. 49; MacLaughlan grievance*, Sept. 16, 1983. Kates — 7 pages. (31)

Company placing grievor on medical leave of absence: partial inability to perform some duties because of physical incapacity — company action tantamount to suspension; company only entitled to seek clarification of her medical status; grievance allowed. *Re CIP Inc., Container Division & Canadian Paperworkers, Loc. 343; Mount grievance*, Sept. 2, 1983. McLaren — 18 pages. (32)\*

Failure to report spill — employer prevented from now relying on negligence in causing spill for discipline — not proved that grievor aware of spill; grievance allowed. *Re Sunny Orange, Division of McCain Foods Ltd., & U.F.C.W.U., Loc. P-114-P3; Bradbury grievance*, Sept. 16, 1983. Devlin — 11 pages. (33)†

Falsification of production records: honour system for piece-work premium — five-day suspension; grievance dismissed. *Re Rockwell International & International Molders and Allied Workers, Loc. 92; Mills grievance*, Sept. 13, 1983. Kates — 11 pages. (34)

Insubordination and neglect of duties — caused in part by scheduling foul-ups; four-day suspensions reduced to written warnings. *Re Rygiel Home & C.U.P.E., Loc. 3009; Willson and Gentles grievances*, Sept. 21, 1983. Barton — 13 pages. (35)†

Insubordination: leaving department when specifically directed not to — three and one-half days suspension reduced to one and one-half days. *Re Boise Cascade (Fort Frances) & United Paperworkers, Loc. 92; Parks grievance*, Sept. 29, 1983. Hinnegan — 9 pages. (36)

Insubordination: threatening and abusive language to foreman — poor past record — grievor's evidence not credible; no grounds to mitigate; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Simpson grievance*, Sept. 27, 1983. Majority: McLaren, Morley; dissent: Marshall — 9 pages. (37)

Leaving workplace early without permission — warnings issued in past; twenty-five demerit points reasonable penalty; grievance dismissed. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Loc. 2251; Nash grievance*, Sept. 6, 1983. Majority: Brent, Murray; dissent: Woodcock — 10 pages. (38)

Work done without authorization — company procedure known to grievor; verbal warning justified; grievance dismissed. *Re Union Gas Limited & E.C.W.U., Loc. 758; Hanratty grievance*, Sept. 6, 1983. Majority: Kennedy, Storie; dissent: Nelson — 12 pages. (39)



Work performance: inadequate level of production — desired standard never made clear to employees — extrinsic evidence of promise by union not relied upon; removal of warning letters directed. *Re Marshall Industries Ltd. & U.S.W.A., Loc. 4696; Alvarez et al grievance*, Aug. 4, 1983. Houston — 6 pages. (40)†

### Estoppel

Alternate employment accepted in lieu of termination — loss of seniority for certain positions as condition; employee estopped from applying for more senior jobs; grievance dismissed. *Re Air Canada & C.A.L.P.A. (Air Canada Pilots); Newell grievance*, Sept. 9, 1983. H. Brown — 37 pages. (41)

Right to fill temporary vacancies at will — past practice and conduct at negotiations considered; estoppel not established; grievance dismissed. *Re CAE-Montupet Diecast Ltd. & I.A.M., Loc. 2719; union grievance*, Sept. 16, 1983. R.J. Roberts — 12 pages. (42)†

### Evidence

Admissibility — collective agreement prohibiting use of stale-dated disciplinary record — not admissible for purpose of mitigation of penalty nor for justification of penalty; interim award. *Re Somerville Belkin Industries Limited & London Commercial Printing Pressmen and Assistants, Loc. 510; Michielse grievance*, Sept. 13, 1983. Majority: Saltman, Lloyd; dissent: Churchill-Smith — 2 pages. (43)

Evidence of previously-assigned schedules relevant; when issue is one of inequity of work assignment, relevant documentation includes schedules of all teachers at college; board must allow evidence to permit an 'in-depth study' into complaint; union has right to summons production of documents; interim award. *Re Fanshawe College & O.P.S.E.U.; Ward grievance*, July 27, 1983. Majority: O'Shea, McManus; dissent: Hallsworth — 5 pages. (44)

Extrinsic evidence — contract not ambiguous; extrinsic evidence of past practice inadmissible. *Re Budd Canada & U.A.W., Loc. 1451; Langyell, Johns, Rose grievance*, Sept. 14, 1983. O'Shea — 11 pages. (45)

### Grievance Procedure

Third step of grievance procedure not undertaken — grievance not properly processed through all steps of grievance procedure; board has no jurisdiction to proceed nor any jurisdiction to extend time limits. *Re Canada Coach Lines Limited & A.T.U., Loc. 107; Sinclair grievance*, Sept. 23, 1983. Majority: McLaren, Billings; dissent: Bosnich — 21 pages. (46)

Timeliness — delay in processing grievance by union not excessive — employer's costs same irrespective of length of time involved in processing grievance where issue is job posting — matter properly brought as policy grievance; grievance arbitrable. *Re Windsor, Corporation of City of, & Windsor Municipal Employees' Loc. 543, C.U.P.E.; policy grievance*, Sept. 22, 1983. Brandt — 15 pages. (47)†

Union improperly bringing personal grievance as policy grievance — company objected too far into proceedings; grievance arbitrable. *Re Halltech & U.S.W.A., Loc. 8272; policy grievance*, Aug. 31, 1983. Majority: Kruger, Meyer; dissent: Baldwin — 18 pages. (48)

### Holidays

Holiday moved because of weekend — where half-day entitlement before holiday these should be moved also; grievance allowed. *Re Peel, Regional Municipality of, & I.B.E.W., Loc. 636; policy grievance*, Sept. 15, 1983. Majority: McLaren, Wacheski; dissent: Eames — 12 pages. (49)

### Holiday Pay

Entitlement: grievor absent on qualifying days because under disciplinary suspension — reason for absence not within enumerated exceptions; grievance dismissed. *Re Noranda Mines Limited (Geco Division) & Canadian Union of Base Metal Workers; King grievance*, Sept. 9, 1983. O'Shea — 21 pages. (50)

"Floater" days: grievors on strike — no call-back before year's end — loss of entitlement; grievance dismissed. *Re CIP Inc. Container Division & Canadian Paperworkers, Locs. 949, 343, 1872, 849 & 213; union policy grievance*, Aug. 25, 1983. Brunner — 14 pages. (51)\*

Lieu day for work performed on statutory holiday — contract provisions applied; filing contract with Minister enough notification of lieu day; grievance dismissed. *Re CNCP Telecommunications & Canadian Association of Communications and Allied Workers; Peters grievance*, Sept. 23, 1983. Majority: Saltman, Milley; dissent: Beaulieu — 11 pages. (52)

Percentage pay in lieu of "benefits" — absence of evidence; normal meaning of benefits includes holiday pay; grievance dismissed. *Re Disabled and Aged Regional Transit System & C.U.P.E., Loc. 839; union policy grievances*, Sept. 6, 1983. R.J. Roberts — 8 pages. (53)†

Plant closure: floating holiday not finalized prior to plant closure — employees entitled to full day's pay; grievance allowed. *Re ICG Manufacturing & U.A.W., Loc. 199; union grievance*, Sept. 12, 1983. Weatherill — 15 pages. (54)\*

### Hours of Work

Guarantee — company failing to provide production employees who opted not to work on Sunday with required number of hours in following regular work week; grievance allowed. *Re General Bakeries Limited & Bakery, Confectionery and Tobacco Workers, Loc. 264; policy grievance*, Sept. 12, 1983. Burkett — 11 pages. (55)

### Illness

Fitness to return to work — grievor bears onus to prove; employer's refusal must be reasonable; simulated test of work to be performed provides objective test; reinstatement without compensation ordered. *Re Multi Fittings Limited & International Molders and Allied Workers, Loc. 49; Fursman grievance*, Sept. 13, 1983. Hinnegan — 10 pages. (56)†

### Interest Arbitration

Provisions of award dealing with bereavement leave, maternity leave, leave of absence, sick leave, vacations — general questions submitted for interpretation. *Re Participating Hospitals & O.N.A.; policy grievance*, Sept. 6, 1983. Majority: Brent, Winkler; partial dissent: Paliare — 25 pages. (57)



### Job Posting

Duty to post "as required" job to arise where employee is temporarily required to fill regular classification — where workload insufficient to justify existence of employee in "as required" position, no duty to post arises; grievance dismissed. *Re St. Marys Cement Company, Bowmanville, & United Cement, Lime and Gypsum Workers, Loc. 568; Langmuir grievance*, Sept. 13, 1983. Brunner; partial dissent: Perkins; dissent: Batten — 16 pages. (58)

Qualifications: combination of seniority and qualifications — despite seniority grievor not qualified; grievance dismissed. *Re Air Canada & C.A.L.P.A. (Air Canada Pilots); Newell grievance*. See (41), *supra*. (59)

Employer required to post vacancy for job classification, not particular job — where employee is absent on approved leave, management has right to reassign duties with no requirement to repost job; grievance dismissed. *Re Children's Aid Society, Halton, & C.U.P.E., Loc. 2501; policy grievance*, Sept. 12, 1983. Devlin — 24 pages. (60)†

Recall of striking employees: resignation of employee — provisions for filling vacancies apply, not provisions for recall from lay-off — posting required; grievance allowed. *Re Central Precision Ltd. & U.S.W.A.; union policy grievance*, Aug. 22, 1983. O'Shea — 12 pages. (61)†

### Job Vacancy

Elimination of one job: creation of new one — no increase in department staff; vacancy could be filled by qualified applicant from department; grievance dismissed. *Re St. Lawrence College (Ontario Council of Regents for Colleges of Applied Arts and Technology) & O.P.S.E.U.; Liddle grievance*, Sept. 9, 1983. Majority: Carter, Shields; dissent: Beaulieu — 7 pages. (62)

### Lay-off

Bumping rights — seniority to be applied even if it results in premium pay; grievances allowed. *Re Algoma Steel Corporation & U.S.W.A., Loc. 5595; McDonald et al grievances*, Sept. 2, 1983. Swan — 15 pages. (63)†

Bumping rights — work still available and performed by junior employee; grievance allowed. *Re Joy Manufacturing & U.S.W.A., Loc. 2871; Gill grievance*, Sept. 19, 1983. H. Brown — 6 pages. (64)

Qualifications — grievor lacks specific knowledge of work required in machinist classification; not qualified to bump into that classification; grievance dismissed. *Re Joy Manufacturing Company (Canada) Limited & U.S.W.A., Loc. 2871; Koplin grievance*, Sept. 19, 1983. H. Brown — 10 pages. (65)

Qualifications — grievor's qualifications not relatively equal; grievance dismissed. *Re Conestoga College of Applied Arts and Technology & O.P.S.E.U.; Bailey grievance*, Aug. 26, 1983. Brent, Shuttleworth, Millard — 12 pages. (66)

Qualifications — no directly related job experience; grievance dismissed. *Re Dresser Canada Inc. (Cambridge) & U.S.W.A., Loc. 5475; Sofokleous grievance*, Sept. 19, 1983. Dunn — 5 pages. (67)

Reduction of grievor's hours — constitutes a lay-off — denial of right to exercise seniority rights to bump into another position violates collective agreement; inconvenience to company not proper basis to derogate from this right; grievance allowed. *Re Ladish Co. of Canada Ltd. & U.A.W., Loc. 397; Jerome grievance*, Sept. 15, 1983. H. Brown — 16 pages. (68)

Reduction of hours of work constituting lay-off — company failed to follow lay-off provisions; grievance allowed. *Re Hamilton Automatic Vending Company Limited & United Cement, Lime, Gypsum & Allied Workers, Loc. 576; policy grievance*, Sept. 14, 1983. Devlin, Dixon, Lewis — 8 pages. (69)

### Leave of Absence

Misunderstanding — grievor under impression that leave granted and airline tickets purchased; subsequent denial unjust; grievance allowed. *Re Dominion Metalware Industries Ltd. & Sheet Metal Workers, Loc. 540; Gogna grievance*, Sept. 22, 1983. Barton — 8 pages. (70)†

Provision that returning employee be "reinstated in his former position" — only entitles employee to assignment within previous job classification, not to specific duties performed prior to absence; grievance dismissed. *Re Children's Aid Society, Halton, & C.U.P.E., Loc. 2501; Detlor grievance*. See (60), *supra*. (71)†

### Management Rights

Production standards: management seeking to increase standards unilaterally; collective agreement silent on change — red-circle rates not adversely affected; grievance dismissed. *Re Simmons Limited & U.E., Loc. 513; policy grievance*, Sept. 13, 1983. Black — 8 pages. (72)†

Smoking privileges withdrawn — rule not unreasonable; grievance dismissed. *Re CIP Container Division & Canadian Paperworkers, Loc. 343; policy grievance*, Sept. 23, 1983. Hinnegan — 15 pages. (73)\*

### Premium Pay

"Dirty pay" — premium not increased since 1975; adjustment necessary to reflect economic reality; rate of inflation, increase in wages, level of "dirty pay" in other collective agreements considered; increase ordered. *Re Boise Cascade Canada Ltd. & I.A.M., Kenora Lodge 490; union grievance*, Aug. 17, 1983. Teplitsky — 4 pages. (74)

Pyramiding: overtime work on scheduled day off and on holiday — only incremental premium payments for different purposes cumulative; grievance allowed in part. *Re London Transit Commission & A.T.U., Div. 741; Emery grievance*, Sept. 13, 1983. Majority: Samuels; dissents in part: Beaulieu, Dale — 15 pages. (75)

Shift-change premium claimed — payable only when insufficient notice of shift change given; grievance dismissed. *Re Hamilton-Wentworth, Regional Municipality of, & Civic Employees of I.U.O.E., Loc. 772; policy grievance*, Sept. 9, 1983. Weatherill — 7 pages. (76)

Shift premium — not limited to rotating-shift workers — remitted to parties for determination of day-shift hours; grievance allowed. *Re Disabled and Aged Regional Transit System & C.U.P.E., Loc. 839; union policy grievances*. See (53), *supra*. (77)†



### Procedure

Subpoena *duces tecum* — arbitrator's jurisdiction found in s. 44(8) — subpoena not over-broad; employer objection dismissed. *Re Toronto Star & Southern Ontario Newspaper Guild; Bartlett grievance*, Aug. 25, 1983. Swan — 18 pages. (78)\*

### Promotion

Qualifications — grievor establishing he possesses skill, ability and physical fitness to do job — company hired incumbent outside bargaining unit — grievor most senior qualified applicant; grievance allowed. *Re Seven-Up Bottling Company (Windsor) Limited & United Brewery Workers, Loc. 278; Greenhalf grievance*, Sept. 26, 1983. Brent — 7 pages. (79)

Qualifications — grievor's skill, ability and qualifications not relatively equal to incumbent; grievance dismissed. *Re St. Catharine's General Hospital & O.N.A.; Corcoran grievance*, Sept. 6, 1983. Brent, Storie, Robbins — 10 pages. (80)

Qualifications — senior applicant entitled to job if qualified; employer entitled to look at all factors, including accident and attendance records, ability to follow instructions, to determine qualifications; grievor's poor attendance record disqualifies him; grievance dismissed. *Re Mississauga, Corporation of City of, & C.U.P.E., Loc. 66; Ross grievance*, Sept. 27, 1983. Burkett, Hassell, Kirkby — 22 pages. (81)

Qualifications — senior grievor not equal to junior employee; grievor not available to start immediately; grievance dismissed. *Re Teck Pioneer Residence, Kirkland Lake, & C.U.P.E., Loc. 1074; Waldron grievance*, Aug. 31, 1983. Majority: Dunn, Ellies; dissent: Turcotte — 10 pages. (82)

Qualifications — seniority governs if applicants' qualifications are "relatively equal"; on evidence arbitration board unable to assess relative equality of job applicants; matter remitted to employer to make fresh determination. *Re Kent-Chatham Board of Health & O.N.A.; Jaruga grievance*, Sept. 26, 1983. Saltman; partial dissent: Beaulieu; dissent: Shillington — 11 pages. (83)

Reversion to previous position following three-month period of assessment — reversion resulting in lay-off — reversion proper but company obligated to revert grievor to another position comparable to her former position; grievance allowed in part. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Francey grievance*, Sept. 21, 1983. Brent — 18 pages. (84)

Trial period exceeded: grievor demoted subsequently — automatic confirmation of job at end of trial; grievor reinstated; grievance allowed. *Re London, City of, & C.U.P.E., Loc. 101; Ayles grievance*, Sept. 13, 1983. Majority: Swinton, Lewis; dissent: Yeo — 13 pages. (85)

### Recall

Qualifications — lesser job posting in different department; grievor capable; grievance allowed. *Re Halltech & U.S.W.A., Loc. 8272; policy grievance*. See (48), *supra*. (86)

### Scheduling of Work

Extra courses added late in academic year and different from those normally taught — neither sufficient notice nor pressing circumstances; grievance allowed. *Re Lambton College of Applied Arts and Technology & O.P.S.E.U.; LeCapelain grievance*, Aug. 30, 1983. Brent, Brady, Bounsall — 15 pages. (87)

Working days — July 1 not included when calculating working days; grievance dismissed. *Re Metropolitan Separate School Board & O.P.S.E.U.; union grievance*, Sept. 6, 1983. Majority: Weatherill, Filion; dissent: Marszewski — 10 pages. (88)

### Seniority

Calculation where temporary service employees — intermittent but continuing employment relationship; probationary period served over aggregate of time worked; grievance allowed. *Re Metropolitan Toronto, Municipality of, & Metropolitan Toronto Civic Employees, Loc. 43; group grievance*, Sept. 6, 1983. Majority: Brent, Tate; dissent: Hayter — 19 pages. (89)

Discrimination — recall from lay-off affected by male and female job classifications, segregated seniority lists; categories not reasonably related to requirements of job; offends *Human Rights Code*; compensation for lost wages and benefits ordered. *Re Brass Craft Canada Ltd. & I.A.M., Loc. 2446; lay-off/recall grievance*, Sept. 1, 1983. R.J. Roberts — 14 pages. (90)\*

### Union Rights

Company communication with employees: breach of recognition clause alleged — no attempt to bargain directly or exclude union; grievance dismissed. *Re Dow Chemical Canada Inc. & E.C.W.U., Loc. 672; policy grievance*, Sept. 7, 1983. Gorsky — 5 pages. (91)†

### Union Security

Policy change respecting part-time employee check-off — existence of local agreement as determining practice superseded by negotiated practice in the form of appendix to subsequent contract; grievance dismissed. *Re Cambrian College of Applied Arts and Technology & O.P.S.E.U.; union grievance*, Sept. 21, 1983. Majority: Brent, Shields; did not concur: Switzman — 12 pages. (92)

### Vacation Pay

Entitlement where indeterminate lay-off — "steadily employed" refers to employees on indeterminate lay-off — no acquiescence by union to support use of past practice in interpretation or for estoppel; grievance allowed. *Re Vibron Ltd. & Sheet Metal Workers, Loc. 540; Heslop et al grievance*, Sept. 19, 1983. Baum — 12 pages. (93)†

### Wages

Gratuity-sharing — practice of parties to share tips based on perceived level of service; board proposes committee to hear and resolve service complaints, fix amount of gratuity-sharing; grievance allowed. *Re Peel County Feed Co. Inc. & Hotel, Restaurant and Cafeteria Employees Union*, Aug. 31, 1983. Majority: Teplitsky, Tate; dissent: MacDermid; addendum: Tate — 8 pages. (94)

Right to progress to higher-wage group — does not apply to higher level within wage group; grievance dismissed. *Re Toronto Transit Commission & C.U.P.E., Loc. 2; Keeling grievance*, Aug. 30, 1983. Majority: Brandt, Perron; dissent: Lewis — 14 pages. (95)



### Welfare Plan

Long term disability — ability to do "any" job not sufficient to terminate benefits; grievor not qualified for comparable job; benefits restored; grievance allowed. *Re Dominion Stores & R.W.D.S.U., Loc. 414; Baker grievance*, Sept. 8, 1983. Majority: M. Picher, Spaxman; dissent: Sargeant — 22 pages. (96)\*

### Work Assignment

Company entitled to rely on special provision for job assignments in a guaranteed work-force situation; grievances dismissed. *Re Hiram Walker & Sons Limited & U.A.W., Loc. 2027; union grievance*, Sept. 9, 1983. Samuels — 25 pages. (97)

Diversion of work from bargaining-unit members to "management" — not to extent to cause lay-off or demotion of employees; general reduction in services provided reason for reduction of personnel; grievance dismissed. *Re Falconbridge Nickel Mines Ltd. & Canadian Guards Association, Loc. 105; direct difference grievance*, June 22, 1983. Teplitsky, Valin, Gilchrist — 8 pages. (98)

Foreman performing bargaining-unit work alleged — maintenance foreman doing repairs; work traditionally assigned to foremen as well; no erosion of bargaining unit; grievance dismissed. *Re Sudbury Memorial Hospital & C.U.P.E., Loc. 1182; policy grievance*, Aug. 31, 1983. Boscariol — 6 pages. (99)†

Non-bargaining unit employee performing some duties of laid-off union employee — primary functions of job not substantially performed; grievance dismissed. *Re Atlas Steel, Division of Rio Algom Ltd., & U.S.W.A.; Goodings grievance*, Aug. 29, 1983. O'Shea — 13 pages. (100)

Replacement of full-time employees with part-timers by attrition — not creation of split shifts to avoid overtime; grievance dismissed. *Re Disabled and Aged Regional Transit System & C.U.P.E., Loc. 839; union policy grievances*. See (53, 77), *supra*. (101)†

Use of "stringers" after full-time bureaus eliminated — part-time employees did not replace full-time services; grievance dismissed. *Re Sault Star & Sault Star Typographical Union No. 746; union grievance*, Sept. 1, 1983. Weatherill — 6 pages. (102)

Supervisor performing bargaining-unit work — exception for emergency work; test is if employees are absent or not available when required; "or" to be read disjunctively; grievance dismissed. *Re Burlington Steel & U.S.W.A., Loc. 4752; Antoniuk grievance*, Aug. 31, 1983. Swan — 9 pages. (103)\*

### Working Conditions

Cafeteria to be open 24 hours a day and opportunity for all employees to purchase full-course hot meal to be provided — change in economic circumstances does not relieve employer of obligation; vending machines no substitute; grievance allowed. *Re Domglas Ltd. & United Glass and Ceramic Workers, Loc. 203; policy grievance*, Aug. 29, 1983. Hunter — 15 pages. (104)†

### Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the months of July, August and September, 1983.

#### Arbitrability

Aspects of grievances not relating to construction industry — board has authority to consider them under both s. 124 and 89; various wage and benefit grievances allowed. *Re Carroll Electric (1982) Ltd. & Christian Labour Association of Canada; union grievances*, Aug. 17, 1983. Howe, Stamp, Theobald — 27 pages. (105)

Determination of employer — respondent claims to be merely on supervision contract for real employer — factors considered — held to be the employer; grievance arbitrable. *Re 384368 Ontario Ltd. o/a Thunderhawk Developments & United Brotherhood of Carpenters and Joiners, Loc. 1669; union grievance*, Aug. 18, 1983. Satterfield, HersHKovitz, Ronson — 13 pages. (106)

#### Collection

Wages and benefits — employer not present at hearing; order to pay issued. *Re Imicon Construction Ltd. & United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, Loc. 67; union grievances*, Aug. 31, 1983. MacDowell, Wightman, Ross — 5 pages. (107)

Wages — employer not present at hearing — order to pay issued. *Re Golden Construction Co., division of 506878 Ontario Ltd. & Labourers' International Union, Loc. 183; Romanelli grievance*, July 4, 1983. Burkett, Eayrs, Kobryn — 2 pages. (108)

Wages — employer not present at hearing — order to pay issued. *Re Golden Construction Co., division of 506878 Ontario Ltd. & Labourers' International Union, Loc. 183; LaMarca grievance*, July 4, 1983. Burkett, Eayrs, Kobryn — 2 pages. (109)

Welfare benefit fund and training fund — retroactive payments — employer not present at hearing — order to pay issued. *Re Ron Robinson Ltd. & I.U.O.E., Loc. 793; union grievance*, July 12, 1983. Satterfield, Kobryn, Stamp — 4 pages. (110)

#### Collective Agreement

Abandonment alleged prior to accreditation and province-wide bargaining — established; grievance dismissed. *Re Toronto Construction Association and Welcon Ltd. & Labourers' International Union, Loc. 506; union grievance*, July 28, 1983. Satterfield, Murray, HersHKovitz — 12 pages. (111)

#### Contracting Out

Employer failed to sub-contract work to signatory of provincial agreement — such sub-contractor available and had submitted quotation; grievance allowed. *Re Stoney Creek Mechanical Limited & Ontario Sheet Metal Workers' Conference, Sheet Metal Workers' International Association, Loc. 537; union grievance*, May 31, 1983. Furness, Kennedy, Murray — 6 pages. (112)



### Damages

Duty to mitigate — no duty to apply for new job at non-union rates after unacknowledged sale of business. *Re Carroll Electric (1982) Ltd. & Christian Labour Association of Canada; union grievances*. See (1), *supra*. (113)

### Discharge

Unsatisfactory work performance alleged — special conditions in construction industry considered — absence of warning still important; grievance allowed. *Re Canadian Engineering and Contracting Co. Ltd. & Labourers' International Union, Loc. 506; Colella grievance*, July 13, 1983. MacDowell, Ronson, Kennedy — 8 pages. (114)

### Discipline

Non-payment for lost tools — written authorization to set off loss against wages infringes *Employment Standards Act* — discipline for failure to repay is appropriate — grievance against no-hire-back policy is premature; grievances allowed in part. *Re Ontario Hydro & I.B.E.W., Loc. 1788; Baskett and union policy grievances*, July 7, 1983. Furness, Bourne, Armstrong — 18 pages. (115)

### Lay-off

No evidence of decrease in work force — action was in bad faith; grievance allowed. *Re Westinghouse Canada Ltd. & International Union of Elevator Constructors, Loc. 90; Courtman grievance*, July 13, 1983. Majority: Franks, Ballentine; dissent: Stamp — 9 pages. (116)

### Premium Pay

Waiting-time pay when final cheques not paid at time of lay-off — agreement to waive penalty unreasonably withheld; grievance dismissed. *Re Bennett and Wright Company Ltd. & Mechanical Contractors Association of Ontario & Ontario Pipe Trades Council and United Association, Loc. 800; union grievance*, Aug. 22, 1983. MacDowell, Ronson, Cooke — 7 pages. (117)

### Res Judicata

Similar previous case between same parties — union estopped — union attempting to relitigate by offering to remove detriment and not enforce proper wage rates — *res judicata* applicable; grievance dismissed. *Re Losereit Sales and Services Ltd. & United Brotherhood of Carpenters and Joiners, Loc. 1316; union policy grievance*, July 20, 1983. Murray, Stamp, Kobryn — 22 pages. (118)

### Travel Allowance

Local arrangement not binding in face of subsequent provincial agreement — estoppel not applicable; grievances dismissed. *Re Bennett and Wright Company Ltd. and Tesc Construction Company Ltd. & United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, Loc. 800; union grievances*, Aug. 25, 1983. Springate, Bell, Ross — 13 pages. (119)

### Union Security

Employees hired before employer bound by provincial agreement — given ten days to apply for union membership — employees hired after that date not to be used on bargaining-unit work; grievance allowed in part. *Re Inducon Development Corporation, Inducon Construction (Northern) Inc. and Inducon Design/Build Associates & Carpenters' District Council of Toronto and Vicinity, Locs. 27, 666, 681, 1133, 1747, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners; union grievance*, July 28, 1983. Majority: Mitchnick, Stamp; dissent: Lee — 38 pages. (120)

### Welfare Plans

Employers obligation to pay contributions to welfare fund in addition to payment of wage rates according to settlement; grievance allowed. *Re Metropolitan Toronto House Wreckers' Association & Labourers' International Union, Loc. 506; group grievance*, May 19, 1983. Mitchnick, Wilson, Cooke — 9 pages. (121)

### Work Assignment

Local area work practice declared on basis that 75% of dry-wall and acoustic work sub-contracted to applicant union; grievance allowed. *Re Grand Valley Construction Association and Carpenters Employer Bargaining Agency & United Brotherhood of Carpenters and Joiners, Loc. 785; policy grievance*, June 10, 1983. Franks, Stamp, Kobryn — 11 pages. (122)

Work performed by employer's sons — union's evidence of time worked accepted where employer failed to keep proper records; grievance allowed. *Re AGIP Structural Steel Ltd. & International Association of Bridge, Structural and Ornamental Ironworkers, Loc. 700; union grievance*, Aug. 15, 1983. Mitchnick, Murray, Armstrong — 3 pages. (123)

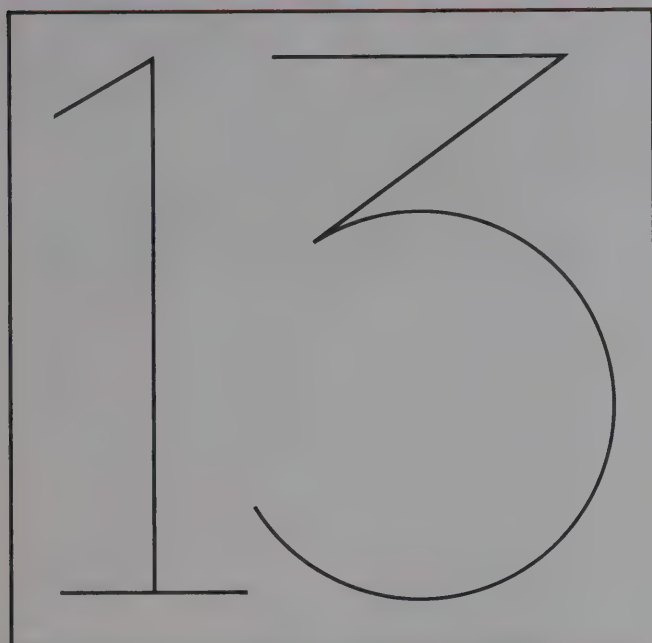
### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.



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# Monthly Bulletin



Ontario Ministry of Labour



Ontario

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persons involved in labour-management  
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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of October, 1983. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Discharge — grievor applied for pension on same day grievance filed; seen as mitigation of damages; not precluded from seeking reinstatement; grievance arbitrable. *Re Herold & Garbe & Graphic Arts International Union; Adair grievance*, Oct. 13, 1983. Kruger — 13 pages. (1)

Performance appraisal challenged — not disciplinary or related to wage progression — part of management rights; grievance not arbitrable. *Re North York Hydro Electric Commission & C.U.P.E., Loc. 11; White grievance*, Oct. 24, 1983. Devlin — 9 pages. (2)†



Settlement of grievance called for third party to assess grievor's qualifications as welder — speed a proper criterion — assessment made in good faith; grievance dismissed. *Re Timmins, Corporation of City of, & C.U.P.E., Loc. 210; Gagne grievance*, Oct. 26, 1983. Devlin — 6 pages. (3)†

Work assessment summary — nothing in collective agreement addresses periodic review of staff — assessment prepared by management in conjunction with staff members — not used for disciplinary purposes; preliminary objection allowed; grievance not arbitrable. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Husband grievance*, Oct. 18, 1983. Devlin — 16 pages. (4)

#### Bargaining Unit

Series of sessional, part-time contracts — full-time status conferred; inclusion in bargaining unit; grievance allowed. *Re Algonquin College of Applied Arts and Technology & O.P.S.E.U.; Gaten grievance*, Oct. 4, 1983. Brunner, Shuttleworth, Marszewski — 25 pages. (5)

Supervisor of volunteers job created — not managerial — office located outside geographic scope of agreement, but relates to work done within the unit; posting required; grievance allowed. *Re Yorklea Children's Lodges Inc. & C.U.P.E., Loc. 2721; union grievance*, Oct. 25, 1983. Baum — 8 pages. (6)†

#### Bereavement Leave

Entitlement — purpose to attend funeral or to make funeral arrangements; grievor did neither; grievance dismissed. *Re Labatt's Ontario Breweries Ltd. (London) & National Brewery Workers, Loc. 1; Taylor grievance*, Oct. 13, 1983. Welling — 5 pages. (7)

#### Board of Arbitration

Power to reconsider no basis for a finding that award not final so as to permit reconsideration upon receipt of medical information after date of award. *Re Multi-Fittings Limited & International Molders and Allied Workers, Loc. 49; Fursman grievance*, Oct. 24, 1983. Hinnegan — 4 pages. (8)†

#### Call-back Pay

Extent of minimum pay guarantee; paid only for time between time called in and actual starting time — past practice not relevant; grievance dismissed. *Re Chedoke-McMaster Hospitals & O.P.S.E.U., Loc. 206; Adams grievance*, Oct. 3, 1983. Majority: Black, Wakely; dissent: Beaulieu — 13 pages. (9)

#### Classification

Higher classification claimed — evidence failing to establish that grievor's work falls squarely within that of classification claimed — no substantial change in content or responsibilities in grievor's work; grievance dismissed. *Re Silverwood Dairies, Division of Silverwood Industries Limited & Retail, Wholesale Dairy and General Workers, Loc. 440; Tomka grievance*, Oct. 18, 1983. Fraser — 10 pages. (10)

Higher classification of secretary claimed — grievors as office assistants not exercising supervisory duties nor working in larger schools; grievances dismissed. *Re Simcoe County Board of Education & O.P.S.E.U., Loc. 330; Ayres et al grievance*, Sept. 20, 1983. Majority: Weatherill, McKeown; dissent: Marszewski — 9 pages. (11)

New classification claimed — not established — existing classification eliminated and job duties distributed over a number of surviving classifications; grievances dismissed. *Re Nacan Products Limited & E.C.W.U., Loc. 819; janitorial grievances*, Aug. 11, 1983. Rayner — 8 pages. (12)

#### Contracting Out

Contracting out to non-union truckers — violation of sub-contracting provisions; grievance allowed. *Re Delmar Contracting & Teamsters Loc. 879; policy grievance*, Oct. 14, 1983. Davis — 11 pages. (13)†

Work normally performed by employees in bargaining unit — employees in bargaining unit on lay-off, necessary equipment not readily available; parts could not have been produced in time span necessary; grievance dismissed. *Re Algoma Steel Corporation Limited, Tube Division, & U.S.W.A., Loc. 5595; group grievance*, Oct. 14, 1983. Davis — 7 pages. (14)†

#### Damages

Contributions to dental-plan coverage owing by employers ascertained. *Re Employing Printers Association of City of Windsor & Graphic Arts International Union, Loc. 517; supplementary award*, Sept. 29, 1983. Kennedy — 4 pages. (15)

Interest payable on retroactive pay — board of arbitration having broad remedial power to make "whole" compensatory awards; board exercising discretion in favour of grievors; interest retroactive to date of breach awarded. *Re Ontario Hydro & C.U.P.E., Loc. 1000; grievance WS-362; supplementary award*, Sept. 8, 1983. Majority: McCamus, McCuaig; partial dissent: McCullough — 20 pages. (16)\*

#### Demotion

Non-disciplinary — incompetence established; evidence of accidents while operating fork-lift truck; grievance dismissed. *Re Midas Canada Inc. & U.S.W.A., Loc. 6727; Hausein grievance*, Sept. 12, 1983. Majority: Harries, Edson; dissent: Martin — 16 pages. (17)

#### Discharge

Absence due to jail sentence — employer's refusal to participate in Temporary Absence Program is reasonable, considering grievor's record — absence breached terms of settlement of earlier discharge; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Loc. 1967; Glass grievance*, Oct. 4, 1983. Kennedy — 10 pages (18)\*†

Absence from work because of jail sentence — just-cause provision imposes affirmative obligation on employer to participate in Temporary Absence Program in absence of compelling business justifications; employer directed to offer its participation in Temporary Absence Program on grievor's behalf, and reinstate him to former position. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Bowman grievance*, Oct. 6, 1983. Majority: Adams, Marshall; dissent: Jarvis — 27 pages. (19)\*

Absence of eighteen months because of work injury — collective agreement provides that employees injured at work shall continue to accumulate seniority until judged "incapable of performing available work"; eighteen-month "leave of absence" clause does not limit period of injured employee's absence; grievance allowed. *Re Webster Manufacturing (London) Limited & International Molders and Allied Workers; Siambis grievance*, Oct. 13, 1983. Hunter — 8 pages. (20)



Absence without notice — termination automatic under collective agreement; grievance dismissed. *Re Victoria Hospital & London and District Service Workers, Loc. 220; Farrugia grievance*, Oct. 12, 1983. Majority: Gorsky, McDermott; dissent: Lewis — 14 pages. (21)

Absenteeism — history of absences for variety of reasons; grievor put on notice many times; no reasonable likelihood that pattern will change; grievance dismissed. *Re Victoria Hospital & London and District Service Workers, Loc. 220; Innes grievance*, Oct. 6, 1983. Majority: Hunter, MacLeod; dissent: Beaulieu — 21 pages. (22)

Absenteeism — several prior similar incidents; suspension without pay and conditional reinstatement substituted. *Re Willroy Mines Ltd., Milton Limestone Aggregates Division, & United Cement, Lime, Gypsum & Allied Workers; Ceelan grievance*, Oct. 11, 1983. H. Brown, Lewis, Wainwright — 23 pages. (23)

Abuse of privilege — possession of drugs while travelling on company pass; grievance dismissed. *Re Canadian Pacific Airlines & I.A.M., Lodge 764; "L" grievance*, Sept. 14, 1983. Majority: Ord, Lough; dissent: Farrall — 14 pages. (24)

Assault — recent record considered; three-month suspension substituted; reinstatement conditional on apology. *Re Brewers' Warehousing Company Ltd. & United Brewers' Warehousing Workers' Provincial Board; March grievance*, Sept. 27, 1983. Black — 4 pages. (25)†

Culminating incident: insubordination — admissible disciplinary record consisting of two written warnings; two-day suspension substituted. *Re Peterborough Plastic Painters Ltd. & United Cement, Lime, Gypsum and Allied Workers, Loc. 519; Proctor grievance*, Sept. 30, 1983. Saltman, Lloyd, Nokes — 13 pages. (26)

Culminating incident of leaving work with false excuse of illness alleged — not established; grievance allowed. *Re Rio Algom Limited & U.S.W.A.; Therrien grievance*, Sept. 26, 1983. Palmer — 8 pages. (27)

Culminating incident; unauthorized absence — poor past record; rules and regulations provide for dismissal if breach occurs; grievance dismissed. *Re Square D Canada Electrical Equipment Inc. & U.E., Loc. 505; Stieh grievance*, Oct. 12, 1983. Lerner — 18 pages. (28)†

Driving company vehicle while license suspended — past practice considered; reinstatement only to temporary status. *Re Brewers' Warehousing Company Ltd. & United Brewers' Warehousing Workers' Provincial Board; Bell grievance*, Sept. 28, 1983. Palmer — 7 pages. (29)

Failure to notify company of inability to report for scheduled work — record of prior discipline; grievance dismissed. *Re Alexander Centre Industries Limited & U.S.W.A., Loc. 7842; Bedard grievance*, Sept. 28, 1983. Davis — 9 pages. (30)†

Failure to report — breakdown in communication — grievor not scheduled; grievance allowed. *Re Thunder Bay Ambulance Services & S.E.U., Loc. 268; Todd grievance*, Oct. 7, 1983. Betcherman — 6 pages. (31)†

Falsification of records — lengthy past record of dishonesty; grievance dismissed. *Re Exide Canada Inc. & U.E., Loc. 512; Brito grievance*, Oct. 24, 1983. Majority: M. Picher, Morley; dissent: Hutchens — 10 pages. (32)

Falsified medical records to support absence — serious misconduct; grievance dismissed. *Re Canada Post Corporation & C.U.P.W.; Colarusso grievance*, Oct. 27, 1983. Burkett — 19 pages. (33)

Harassment of supervisor by late-night phone calls — apology, sixteen-year service and disciplinary record considered; grievance dismissed. *Re Direct Transportation System Ltd. & Teamsters Loc. 91; Meagher grievance*, Aug. 31, 1983. Majority: Rayner, Singleton; dissent: Thompson — 6 pages. (34)

Insubordination — violation of safety standards not found; continued refusal to work; grievance dismissed. *Re Kerr Addison Mines & Kerr Addison Employees' Association; Pietrzak grievance*, Oct. 6, 1983. Duchesneau-McLachlan — 19 pages. (35)†

Insubordination — violation of safety standards not found; continued refusal to work; grievance dismissed. *Re Kerr Addison Mines & Kerr Addison Employees' Association; Spadetto grievance*, Oct. 6, 1983. Duchesneau-McLachlan — 19 pages. (36)†

Intoxication at work — previous record considered; thirty-day suspension substituted. *Re Border Tool and Die Ltd. & U.A.W., Loc. 195; Leffelhoc grievance*, Sept. 26, 1983. Palmer — 8 pages. (37)

Theft alleged — employer satisfies burden of proof on balance of probabilities even though all evidence circumstantial; grievance dismissed. *Re Ottawa Board of Education & Ottawa Board of Education Employees; Laframboise grievance*, Oct. 4, 1983. Kates, Chodos, O'Brien — 23 pages. (38)

Theft of employer's property — grievor's testimony not credible — not an isolated instance; grievor not candid at hearing; grievance dismissed. *Re Air Canada & I.A.M.; Walker grievance*, Oct. 27, 1983. MacDowell — 21 pages. (39)

Unauthorized absence; grievor convicted and incarcerated for two months — did not notify company in advance, and did not receive permission to be absent — grievor knew of charge and trial date in advance — notification in advance was possible; permission for leave not unreasonably withheld; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited & United Brewery Workers, Loc. 325 Etobicoke; Maliszewski grievance*, Oct. 17, 1983. Little — 21 pages. (40)

## Discipline

Conviction for impaired driving — civilian employee involved in off-duty incident; eight-day suspension not unreasonable; grievance dismissed. *Re Fort Frances Board of Commissioners of Police & Fort Frances Police Association; Van Drunen grievance*, Oct. 11, 1983. Aggarwal — 22 pages. (41)

Defacing company property — insufficient evidence; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; Fitzgerald grievance*, Sept. 7, 1983. Swan — 13 pages. (42)

Intoxication alleged — employer did not establish grievor unfit for work on balance of probabilities; grievance allowed, record of discipline to be removed from grievor's file, compensation for lost wages and benefits ordered. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Carre grievance*, Oct. 7, 1983. Majority: R.J. Roberts, Marshall; dissent: Jarvis — 19 pages. (43)



Lateness, improper shift switching, refusal of overtime — latter two allegations not established; five-day suspension reduced to two days. *Re Sunny Orange, Division of McCain Foods Ltd. & U.F.C.W.U., Loc. P-114-P3; Bradbury grievance*, Oct. 28, 1983. Black — 9 pages. (44)†

Offensive language — no prior warning of possible consequences; suspension reduced to written warning. *Re Armco Canada Ltd. & U.S.W.A., Loc. 4054; Craig grievance*, Oct. 11, 1983. R.J. Roberts — 7 pages. (45)†

Professional misconduct alleged — employer failed to discharge evidentiary burden — board cannot establish material fact on basis of hearsay; grievance allowed, letter of reprimand to be withdrawn. *Re York, Borough of, Local Board of Health & O.N.A.; Cormack grievance*, Oct. 7, 1983. Saltman, Paulin, Symes — 8 pages. (46)

Unauthorized absence — one-day leave refused — merely stating he was sick is not enough to exonerate grievor; grievance dismissed. *Re Emery Industries Ltd. & Teamsters Chemical, Energy and Allied Workers, Loc. 1552; Murley grievance*, Sept. 28, 1983. Palmer — 6 pages. (47)

Unauthorized and unsafe performance of work jointly with another employee — each member of team responsible; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Loc. 5417; Farladeau grievance*, Sept. 28, 1983. Palmer — 6 pages. (48)

Warning letter from employer to grievor re attendance does not constitute disciplinary action — since no action taken, arbitrator has no jurisdiction to hear the matter; grievance dismissed. *Re Wardair Canada (1975) Limited & C.A.L.F.A.; Namedof grievance*, Sept. 28, 1983. Palmer — 6 pages. (49)

Work performance unsatisfactory; prior similar incidents; grievance dismissed. *Re Steel Company of Canada Inc., Hilton Works & U.S.W.A., Loc. 1005; Lount grievance*, Oct. 27, 1983. Majority: Burkett, Slater; dissent: Marshall — 17 pages. (50)

### Employment Status

Recall for one day's work — considered part-time employee; benefits not receivable; grievance dismissed. *Re Adam's Cartage & Teamsters Loc. 880; Roberts grievance*, Aug. 25, 1983. Majority: Ianni, Gress; dissent: Laub — 11 pages (51)

Regularity of increased teaching load put grievor in full-time Teaching Master classification — attempt to assign him fewer hours does not alter status as Teaching Master; employer cannot unilaterally redesignate to partial load without his consent; grievance allowed; mandatory prescription clause in collective agreement limits compensation awarded. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; Hague grievance*, Oct. 24, 1983. Majority: Brunner, Cochrane; dissent: Shields — 20 pages. (52)

Status of employees as partial-load or full-time depends on number of hours worked; employer not considering performance of certain services as part of assigned duties; evidence insufficient to make further determinations. *Re Fanshawe College & O.P.S.E.U.; union grievance*, Oct. 25, 1983. Brent, Hoddie, McManus — 10 pages. (53)

### Estoppel

Acquiescence — no acquiescence unless knowledge that rights interfered with; grievance allowed. *Re Delmar Contracting & Teamsters Loc. 879; policy grievance*. See (13), *supra*. (54)†

### Evidence

Conviction for theft and trial transcript — not sufficient evidence to establish theft for discharge case; grievance allowed. *Re Chrysler Canada Ltd. & U.A.W., Loc. 1285; Halkes grievance*, Aug. 22, 1983. Palmer — 7 pages. (55)\*

Past record of grievor receivable in order to ascertain propriety of extent of discipline; grievance dismissed. *Re Canada Post & C.U.P.W.; Brind'Amour grievance*, Sept. 8, 1983. Swan — 12 pages. (56)

Timeliness of reports — distinction between reports and notices — reports must be filed within time limits; notices within reasonable time; evidence receivable. *Re Canada Post Corporation & C.U.P.W.; Fitzgerald grievance*. See (42), *supra*. (57)

### Grievance Procedure

Policy grievance — properly brought where subject matter is inclusion or exclusion of new classification in bargaining unit; interim award. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Loc. 79; policy grievance*, Sept. 28, 1983. McLaren, Beresford, Lewis — 12 pages. (58)

Policy grievance brought although precipitating incident was discharge of an individual employee — policy grievance proper; probationary employees entitled to grieve discharge; grievance arbitrable. *Re Central Stampings Limited & Christian Labour Association of Canada; policy grievance*, Oct. 24, 1983. Hunter — 12 pages. (59)†

Time limits refer to compensation only so extension by s. 44(6) not possible — informal complaint to foreman constituting first step of grievance procedure; employer objection dismissed. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Loc. 2288; Bellerose grievance*, Sept. 7, 1983. Rayner, Morley, Gurevitch — 10 pages. (60)

Timeliness — provision for two-week period in which to dispute annual seniority posting; later grievance not prohibited, but liability is limited; grievance arbitrable. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; Gurofsky grievance*, Oct. 19, 1983. Majority: Brunner, Cochrane; partial dissent: Campbell — 21 pages. (61)

Timeliness: continuing grievance — grievance arbitrable but damages to be limited. *Re Algonquin College of Applied Arts and Technology & O.P.S.E.U.; Gatien grievance*. See (5), *supra*. (62)

### Holidays

Boxing Day falling on Sunday — grievors received holiday pay, did not get day off in lieu — no provision in collective agreement giving day off in lieu of holiday unless it occurs during employee's vacation; "greater right or benefit" under *Employment Standards Act* does not apply as Boxing Day not set out as public holiday; grievance dismissed. *Re Humpty Dumpty Foods Limited & R.W.D.S.U., Loc. 461; group grievance*, Oct. 7, 1983. Weatherill — 6 pages. (63)

### Holiday Pay

Part-time employees — entitled to pay only if holiday worked; grievances dismissed. *Re Women's Christian Association of London & London and District Service Workers, Loc. 220; Nasiakos and Kendrick grievances*, Aug. 19, 1983. Welling — 6 pages. (64)†



**Part-time employees:** requirement that employee work "full working day" immediately preceding holiday — grievor worked to extent company required; grievance allowed, grievor to be paid for holidays in question. *Re Humpty Dumpty Foods Limited & R.W.D.S.U., Loc. 461; Hutchinson grievance*, Oct. 7, 1983. Weatherill — 9 pages. (65)\*

**Qualifying day:** grievors on strike — requirement to work full shifts on scheduled working days next preceding and succeeding a holiday not met; grievances dismissed. *Re General Bakeries Limited & Bakery, Confectionery and Tobacco Workers, Loc. 264; Didiano and Eisentraut grievances*, Sept. 29, 1983. McLaren — 11 pages. (66)

### Illness

**Employer harassment** leading to anxiety problems alleged — no impropriety in employer's behaviour found; grievance dismissed. *Re Brantford, City of, & Brantford Civic Employees, Loc. 181; Morrison grievance*, Sept. 6, 1983. Swan, Brillinger, Maddison — 8 pages. (67)

### Job Evaluation

**Higher classification sought:** four categories of Job Evaluation Programme affected — change in size and complexity of transformers has limited effect — monetary loss and opportunity for damage to product greater — responsibility and level of interdependence of work increased — work conditions not drastically affected; grievance allowed in part. *Re Westinghouse Canada Limited & U.E., Loc. 504; group grievance*, Oct. 7, 1983. Palmer, Coupey, Davidson — 15 pages. (68)

**Job description** — new job description not given to union — effect on other jobs not known — company ordered to supply accurate job description to union before board proceeds; interim award. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; union grievance*, Oct. 17, 1983. P. Picher — 8 pages. (69)

### Job Posting

**Job descriptions** vague — where move to job with same title but different functions employer discretion as to description and necessity of posting; grievance dismissed. *Re Children's Aid Society, Porcupine and District, & C.U.P.E., Loc. 2196; union grievance*, Oct. 5, 1983. Duchesneau-McLachlan — 7 pages. (70)†

**Temporary move-ups** — job not permanent; normal posting procedures need not be followed; grievances dismissed. *Re Colonial Cookies, Division of Beatrice & U.F.C.W.U., Loc. 617P; Bingeman and Strome grievances*, Oct. 13, 1983. R.J. Roberts — 6 pages. (71)†

### Jury Duty

**Compensation** for shift not worked — jury duty taking place outside working hours — no connection to lost time; grievance dismissed. *Re Elan Tool and Die Ltd. & U.A.W., Loc. 127; Bosselaar grievance*, Sept. 23, 1983. Palmer — 5 pages. (72)

### Lay-off

**Bumping rights** — collective agreement providing for departmental seniority; grievance dismissed. *Re Abitibi-Price & Canadian Paperworkers, Loc. 90; policy grievance*, Oct. 20, 1983. Majority: McLaren, Porter; dissent: Paxton — 13 pages. (73)

**Bumping rights** — no right to bump part-time employees not covered by the agreement; grievance dismissed. *Re T.G. Bright & Co. Ltd. & United Brewery Workers, Loc. 326; Bent et al grievance*, Oct. 11, 1983. McLaren — 12 pages. (74)

**Elimination of job** but no actual loss of employment — lay-off given wide definition — company procedure in bumping junior employee correct; grievance dismissed. *Re Webster Manufacturing (London) Limited & International Molders and Allied Workers, Loc. 49 (London); Campbell grievance*, Sept. 28, 1983. Palmer — 6 pages. (75)

**Qualifications** — first grievor had ability to perform available work; employees who had less seniority than second grievor performed specialized work; first grievance allowed and second grievance dismissed. *Re Do-Tan Tool and Gauge Ltd. & I.A.M., Loc. 1740; Martin and Dodds grievances*, Oct. 11, 1983. Majority: Black, S. Carter; dissent: Gillis — 8 pages. (76)

**Qualifications** — grievor claiming job of stores attendant — grievor sufficiently capable to perform work claimed with training; grievance allowed. *Re Nitrochem Inc., Maitland Works, & E.C.W.U., Loc. 33; Flood grievance*, Oct. 13, 1983. Majority: P. Draper, Hoffman; dissent: McGee — 12 pages. (77)

**Qualifications** — grievor had done similar work and had transferable skills; grievor awarded pay equal to ten-day trial period, more if he meets requirements. *Re Canadian General Electric Company Ltd. & U.E., Loc. 524; Deal grievance*, Sept. 30, 1983. Langille — 15 pages. (78)†

**Qualifications** — grievors' qualifications not relatively equal to those of junior employees retained; grievances dismissed. *Re Borden Company Limited, Borden Chemical Division, & U.S.W.A., Loc. 13491; Powell and Baxter grievances*, Oct. 11, 1983. Kennedy — 7 pages. (79)

**Qualifications** — grievor not relatively equal in qualifications to those junior employees he sought to displace; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Loc. 1005; Grande grievance*, Oct. 20, 1983. Kennedy, Marshall, Murray — 8 pages. (80)

**Qualifications** — senior employees not given chance to prove capability — company unable to show grievor incapable; grievance allowed. *Re Dresser Canada (Industrial Products) & U.S.W.A., Loc. 5475; Bartley grievance*, Sept. 19, 1983. Sheppard — 15 pages. (81)

**Qualifications** — unskilled jobs; only familiarization not training required; grievances allowed. *Re Canada Spool and Bobbin Co. Ltd. & International Woodworkers; Scheffer and Arnold grievances*, Sept. 12, 1983. Welling — 14 pages. (82)†

**Qualifications** — to displace junior employee, grievor must be fully qualified to do work without training — providing employee with familiarization period is not the same as providing employee with period to become fully qualified; grievor not qualified; grievance dismissed. *Re Loyalist College of Applied Arts and Technology & O.P.S.E.U.; Graef grievance*, Sept. 22, 1983. Majority: H. Brown, Shields; dissent: Switzman — 21 pages. (83)



Vacations — no loss of bumping rights if refusal to readjust vacation schedule to meet lay-off; grievance allowed. *Re Abitibi-Price & Canadian Paperworkers, Loc. 90; policy grievance.* See (73), *supra*. (84)

#### Leave of Absence

Leave of absence without pay requested by grievor denied — management based decision on requisite considerations; grievance dismissed. *Re Ottawa Board of Commissioners of Police & Ottawa Police Association Limited "Police Personnel"; Dunnigan grievance, Oct. 5, 1983.* Welling — 6 pages. (85)

#### Management Rights

Change of parking area — convenience of employees to be considered as well as efficiency, cost effectiveness — no breach; grievance dismissed. *Re Kimberly-Clark of Canada Limited & United Paperworkers, Loc. 665; policy grievance, Oct. 11, 1983.* Majority: Kennedy, Brady; dissent: Hay — 14 pages. (86)

#### Overtime

Distribution — grievor not regularly assigned to work; no evidence of inequitable distribution; grievance dismissed. *Re Loc-Pipe Division of George Wimpey Canada Ltd. & International Molders and Allied Workers, Loc. 28; DiLavro grievance, Oct. 28, 1983.* Brunner — 7 pages. (87)

Distribution — work performed normally done by "unskilled" helper not maintenance men; grievance dismissed. *Re Armco Canada & U.S.W.A., Loc. 4054; policy grievance, Oct. 18, 1983.* Hearn — 8 pages. (88)†

Employer required to distribute overtime equitably — not required to schedule overtime on basis of seniority; grievance dismissed. *Re Union Carbide Canada Limited & Printing Specialties and Paper Products Union, Loc. 512; Dettman grievance, Aug. 31, 1983.* Majority: Rayner, Shields; dissent: Nokes — 7 pages. (89)

Entitlement — no obligation to contact grievors on vacation when overtime offered, even though vacations over when overtime worked; grievance dismissed. *Re St. Mary's Cement Co. Ltd. & United Cement, Lime, Gypsum and Allied Workers, Loc. 568; Denyer and Ruelland grievance, Oct. 25, 1983.* Houston — 7 pages. (90)†

#### Overtime Pay

Lower-rated work done on overtime — constitutes a "transfer" so that higher regular rate is paid — "regular" rate is rate received during regular hours that week; grievance allowed. *Re Weetabix of Canada (Mfg.) Ltd. & U.F.C.W.U., Loc. 1230-2; Callahan grievance, Oct. 21, 1983.* Emrich — 17 pages. (91)†

#### Premium Pay

Travel time — employees given choice of staying at work site or commuting — failure to provide reasonable living condition at work site denies choice; employer to pay premium permitted under collective agreement for travel time spent outside normal working hours until living conditions adequate. *Re Ontario Hydro & C.U.P.E., Loc. 1000; group grievance, Oct. 3, 1983.* Kates — 11 pages. (92)

#### Promotion

Qualifications — company erred in ascribing qualifications which are unnecessary for job as presently described and performed on basis of future change to job description; grievances allowed. *Re London Public Utilities Commission & C.U.P.E., Loc. 4; Spero and Haight grievances, Aug. 30, 1983.* Majority: Palmer, Belecky; dissent: Coups — 11 pages. (93)\*

Qualifications — company erred in equating prior experience with ability — grievor as more senior employee with ability to perform the work entitled to have been selected; grievance allowed. *Re Champion Road Machinery Limited & I.A.M., Lodge 1863; Bauer grievance, Oct. 4, 1983.* Hunter, Lewis, Sergeant — 9 pages. (94)

Qualifications — company erred in failing to consider whether grievor could fill position satisfactorily following suitable period of training; matter remitted to employer to exercise its discretion; grievance allowed in part. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Loc. 279; Ladage grievance, Sept. 30, 1983.* Fraser, Harnden, Emond — 14 pages. (95)

Qualifications — evidence as to equivalency for minimum educational requirements provided after job awarded — evidence established grievor qualified in fact at time of application; grievance allowed. *Re Scarborough, Corporation of Borough of, & Scarborough Civic Employees' Union, Loc. 368; Jones grievance, Sept. 27, 1983.* Majority: H. Brown, Hodges; dissent: Filion — 15 pages. (96)

Qualifications — grievor's application considered in good faith — previous interview with eventually successful outside applicant not in bad faith; grievance dismissed. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Pohl grievance, Oct. 27, 1983.* MacDowell — 18 pages. (97)

Qualifications — grievor's qualifications inferior to those of successful applicant; grievance dismissed. *Re East Parry Sound Board of Education & C.U.P.E., Loc. 1165; Hunt grievance, Oct. 20, 1983.* Kennedy, Anisimoff, Storey — 5 pages. (98)

Qualifications equal — seniority applied; grievance allowed. *Re Canadian Pacific Hotels & Hotel, Restaurant and Cafeteria Employees, Loc. 75; policy grievance, Oct. 1983.* Majority: McCulloch, Tate; did not concur: Clark — 11 pages. (99)

Qualifications — sufficient ability criterion — senior grievor possessing sufficient ability; employer acting arbitrarily and unreasonably; grievor placed in position. *Re Windsor Utilities Commission & I.B.E.W., Loc. 636; Hames grievance, Oct. 12, 1983.* Majority: Swinton, McKenzie; dissent: Hurd — 16 pages. (100)

Qualifications — lead hand — leadership qualities required enough to overcome seniority provisions; grievance dismissed. *Re Schlegel Canada Inc. & Amalgamated Clothing and Textile Workers; Waterman grievance, Oct. 11, 1983.* Rayner — 8 pages. (101)†



## Recall

Job qualifications upgraded — qualifications not seniority determines recall; grievance dismissed. *Re Richards-Wilcox of Canada & I.A.M., Loc. 756; Hudson grievance*, July 19, 1983. R.J. Roberts — 6 pages. (102)†

## Scheduling of Work

Change of work schedules for some employees — union not informed as required by contract; grievance allowed. *Re Dow Chemical (Sarnia) & E.C.W.U., Loc. 672; policy grievance*, Aug. 22, 1983. Welling — 10 pages. (103)†

Split shifts — seniority not applicable where contract silent; scheduling management rights; grievance dismissed. *Re Westin Hotel & Hotel, Restaurant and Cafeteria Employees, Loc. 75; Iwachniuk grievance*, Oct. 7, 1983. Houston — 10 pages. (104)†

Notice for assignment of new courses not given within proper time — insufficient evidence to change date by rectification or due to sharp practice — declaration that agreement violated, damages not appropriate. *Re Laurentian University of Sudbury & Laurentian University Faculty Association; union policy grievance*, Sept. 19, 1983. McKechnie — 15 pages. (105)†

## Seniority

Apprentices certified prior to lay-off date — automatic classification and full seniority rights as the result of certification. *Re Dominion Bridge & U.S.W.A., Loc. 3390; group grievance*, Oct. 5, 1983. Schiff — 8 pages. (106)

Entitlement — work performed by employee from date of hire to date of appointment as Dean covered by agreement — no error in crediting of seniority; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; union grievance*, Oct. 7, 1983. Majority: Brunner, Gray; dissent: Marszewski — 14 pages. (107)

Non-bargaining unit employee may exercise accumulated seniority to enter bargaining unit even if lay-off of junior employee results — grievance dismissed. *Re Atomic Energy of Canada Limited, Engineering Company & Public Service Alliance of Canada, Loc. 00358, National Component; policy grievance*, Oct. 6, 1983. Saltman — 13 pages. (108)\*

Calculation — begins only when full-time status achieved; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; Gurofsky grievance*. See (61), *supra*. (109)

## Sick Pay

Entitlement — within management discretion to determine amount of sick pay payable; no evidence that company erred in exercising its discretion; grievance dismissed. *Re Sudbury Star & Northern Ontario Newspaper Guild, Loc. 232; Burke grievance*, May 30, 1983. Majority: Lerner, Farrell; dissent: McVey — 14 pages. (110)

## Successor Rights

Receivership: non-payment of wages, vacation pay, union dues — receiver responsible for those debts coming due during receivership; original owner for prior debts; grievance allowed in part. *Re Genosha Hotel (Siroco Developments) & Hotel and Restaurant Employees and Bartenders, Loc. 280, Beverage Dispensers Union; union grievance*, Oct. 6, 1983. Andrews — 7 pages. (111)†

Unpaid vacation pay — purchasing company considered signatory to original contract — assume all obligations with respect to employees; grievances allowed. *Re New Edwin Hotel & International Beverage Dispensers and Bartenders Union, Loc. 280; Lioulis, Morus, Batsos grievances*, Oct. 11, 1983. Hearn — 8 pages. (112)†

## Technological Change

Notice untimely — details contained in notice inadequate; declaratory remedy. *Re Canada Post Corporation & C.U.P.W.; union grievance*, Sept. 12, 1983. Swan — 24 pages. (113)

## Union Officials

Leave of absence for work with union — employer's reasons for refusal not unreasonable; grievance dismissed. *Re Whitby, Corporation of Town of, & C.U.P.E., Loc. 53; Sarookanian grievance*, Oct. 3, 1983. Brent — 9 pages. (114)†

## Vacation Pay

Calculation — company erred in calculating vacation pay from effective date of collective agreement rather than applying percentage increase negotiated to previous twelve-month period; grievance allowed. *Re Hudson Sportswear Manufacturing Co. Ltd. & United Garment Workers, Loc. 253; group grievance*, Oct. 21, 1983. Wilson — 5 pages. (115)†

Calculation — based on "gross earnings" — latent ambiguity — company practice of excluding previous year's vacation pay from gross earnings for calculation of vacation pay; grievance dismissed. *Re Hyde Spring and Wire & U.A.W., Loc. 397; union grievance*, Aug. 24, 1983. Rayner — 9 pages. (116)

Entitlement — possibility that employees to be in worse position following change in vacation-pay accrual system in collective agreement — representation by company that no employee to be disadvantaged not established; grievance dismissed. *Re Sperry Gyroscope & U.A.W., Loc. 641; policy grievance*, Oct. 24, 1983. Samuels — 8 pages. (117)

Termination: grievor paid vacation pay from anniversary date to date of termination — grievor should have been paid in respect to vacation he would have been entitled to during calendar year, prorated in proportion to time worked; grievance allowed. *Re Great Atlantic and Pacific Company Ltd. & R.W.D.S.U., Loc. 414; O'Brien grievance*, Sept. 13, 1983. Majority: Weatherill, Dahmer; dissent: Earle — 11 pages. (118)\*

## Wages

Incentive plan introduced — collective agreement prevents employer from unilaterally altering wage structure during agreement's term; incentive plan to be rescinded; grievance allowed. *Re Marimac Inc. (Cornwall) & Amalgamated Clothing and Textile Workers, Loc. 2343; union policy grievance*, Oct. 6, 1983. Kates — 8 pages. (119)

Responsibility pay — entitlement — nurse entitled if assignment of duties of higher classification made even though full range of duties may not be performed and title of classification may not be given. *Re Participating Hospitals & O.N.A.; policy grievance*, July 18, 1983. Teplitsky, Paliare, Winkler — 13 pages. (120)



Students in part-time bargaining unit paid same wage throughout year as paid during school vacation — employer consistently distinguished between student and non-student part-time employees; grievance dismissed. *Re Toronto Western Hospital & C.U.P.E.*; union grievance, Oct. 19, 1983. Brent, Filion, Griffin; addendum: Griffin — 11 pages. (121)

#### Work Assignment

Bargaining-unit work allegedly performed by non-unit employees — use of VDTs temporarily by unit members, reassigned to non-unit employees; not exclusively bargaining-unit work; grievance dismissed. *Re Eaton Yale Ltd. & International Molders and Allied Workers*; union policy grievance, Oct. 11, 1983. Rayner — 7 pages. (122)

Inequity in work assignment: employer altering work assignment during academic year — employer entitled to respond to changing financial situation — inconvenience to grievor not same as inequity; issue estoppel applicable; grievance dismissed. *Re Lambton College & O.P.S.E.U.*; *Cheney grievance*, Oct. 12, 1983. Majority: Kates, Correll; did not concur: Bounsall — 26 pages. (123)

Students alleged performing duties of part-time employees — students filling in for vacationing staff not taking work from part-time employees unless part-timers would normally perform the work; grievance dismissed. *Re Niagara, Regional Municipality of, & C.U.P.E., Loc. 1263*; policy grievance, Oct. 11, 1983. Baum — 9 pages. (124)†

Work not falling into established categories — where inadequate or no classification system, compensation to be determined on *quantum meruit* basis; compensation limited to date when amended job description becomes effective; grievance allowed. *Re Ontario Hydro & Ontario Hydro Employees, Loc. 1000*; grievance NT-151, Oct. 6, 1983. Majority: Shime, Nabi; dissent: Angus; addendum: Nabi — 21 pages. (125)\*

### Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the month of October, 1983.

#### Collection

Union dues and trust-fund payments — employer not present at hearing; order to pay issued. *Re S. & E. Mechanical, Division of 471177 Ontario Ltd. & United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, Loc. 853*; union grievance, Sept. 13, 1983. Springate, Wilson, Ballentine — 2 pages. (126)

#### Collective Agreement

Employer not bound by provincial agreement — Pipe Fabrication Shop Agreement and Union Label Agreement not collective agreements — not binding with respect of employees engaged in on-site installation; grievance not arbitrable. *Re Tri-Canada Inc. & United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, Loc. 46*; union grievance, Sept. 12, 1983. Satterfield, Stamp, Kobryn — 11 pages. (127)

#### Damages

Compensation for wrongful discharge — determination of date when grievor would have been laid off; employer date accepted. *Re Canadian Engineering and Contracting Co. Ltd. & Labourers, Loc. 506*; *Colella grievance*, Sept. 14, 1983. R. Brown, Ronson, Kennedy — 4 pages. (128)

Interest — compensation for violation of industry-wide bumping provisions; arbitrator's authority to award interest considered; grievance allowed, with interest. *Re Beckett Elevator Company Ltd. & International Union of Elevator Constructors, Loc. 50*; *National Elevator and Escalator Association (Intervener)*; union grievance, Sept. 23, 1983. MacDowell, Kennedy, Murray — 25 pages. (129)\*

#### Discharge

Failure to repay \$4,578 overpayment for room and board allowance — time allowed for repayment was unreasonably short, considering amount and grievor's lack of fault; grievance allowed, overpayment to be deducted from compensation. *Re Ontario Hydro and Electrical Power Systems Construction Association & United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, Loc. 527*; *Forbes grievance*, Sept. 13, 1983. Mitchnick, Murray, Armstrong — 11 pages. (130)

#### Procedure

Work-assignment dispute — adjourned for two weeks to allow employer or intervener to file s. 91 complaint. *Re S.N.C.-F.W. Ltd. & Operative Plasterers' and Cement Masons' International Association*; *Millwright District Council of Ontario, Intervener*; union grievance, Sept. 12, 1983. Satterfield, Ballentine, Stamp — 3 pages. (131)

#### Travel Allowance

Free zone — no allowance payable within zone no matter where worker resides — past practice not giving rise to estoppel in light of specific agreement negotiated; grievance allowed in part. *Re George Ryder Construction (Cavilier Construction) & United Brotherhood of Carpenters and Joiners, Loc. 2486*; union grievance, Sept. 19, 1983. Murray, Wilson, Ballentine — 25 pages. (132)

#### Work Assignment

Non-union employees had not been required to apply for union membership — grievance allowed in part. *Re George Ryder Construction (Cavilier Construction) & United Brotherhood of Carpenters and Joiners, Loc. 2486*; union grievance. See (132), *supra*. (133)

#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.



# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of November, 1983. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Abandonment and delay — both arising from employer's mistaken assertion of earlier agreement on interpretation; union's contribution to delay will limit possible compensation; grievance arbitrable. *Re Haley Industries Ltd. & U.S.W.A., Loc. 4820; union policy grievance*, Nov. 3, 1983. Fraser — 22 pages. (1)†

Discharge of probationary employee — no substantive right to protection in contract; grievance not arbitrable. *Re Brockville General Hospital & C.U.P.E., Loc. 252; Glover grievance*, Nov. 2, 1983. Majority: Carter, Wace; dissent: Jenkins — 11 pages. (2)\*

Effect of memorandum of settlement on future cases — disciplinary or discharge cases involve determinations of fact in each case; previous settlements cannot oust jurisdiction of arbitrator to determine whether facts establish cause in subsequent incident; employer's objection denied. *Re Midas Canada Inc. and International Parts Manufacturing Limited & U.S.W.A.; Blair grievance*, Nov. 9, 1983. McLaren — 13 pages. (3)\*†

Imposition of parking fees — collective agreement silent; not a violation of wage provisions; *Inflation Restraint Act* not applicable; grievance not arbitrable. *Re Trenton Memorial Hospital & S.E.I.U. Locs. 183 & 663; union policy grievance*, Nov. 25, 1983. McKechnie — 9 pages. (4)†



Insurance benefits — language of agreement indicating company assumes risk; grievance arbitrable. *Re Longyear Canada Inc. & I.A.M., Loc. 2412; Brownbill grievance*, Nov. 1, 1983. Adamson — 9 pages. (5)†

Jurisdictional dispute over work assignment — resolving grievance requiring interpretation of other agreement; grievance not arbitrable. *Re Council of Printing Industries of Canada & Teamsters Loc. 419; union grievance*, Nov. 24, 1983. Brandt — 13 pages. (6)\*

Previous settlement — allegation that employer reneged on oral promise not to transfer grievor — not a misrepresentation of fact which might vitiate settlement; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; Hebert grievance*, Nov. 10, 1983. Brent, Hoddle, McManus — 8 pages. (7)

Regulation limiting class size — not incorporated into collective agreement; arbitrable to determine scope of employer's authority to assign work. *Re London Board of Education & London Women Teachers' Association, Public School Teachers' Federation and L'Association des Enseignants Franco-Ontariens; Branch Affiliate policy grievance*, Nov. 17, 1983. Burkett — 19 pages. (8)

Request by union for s. 45 appointment — time period in grievance procedure complied with; grievance arbitrable. *Re McDonnell Douglas Canada Ltd. & U.A.W., Loc. 1967; policy grievance*, Nov. 25, 1983. Saltman — 9 pages. (9)†

Right to newly-established higher classification — not set out in agreement — employer not estopped from relying on missed time limit for appealing actual classification; grievances not arbitrable. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Bartlett and Carberry grievances*, Oct. 27, 1983. M. Picher — 14 pages. (10)

Settlement of grievance resulting in grievor's lay-off — grievance cannot be revived — settlement not covering later lay-off, but grievance filed eleven months after untimely; grievance dismissed. *Re Atlantic Packaging Ltd. (formerly Brock Containers Ltd.) & International Woodworkers; Portelli grievance*, Nov. 17, 1983. Majority: Saltman, Wallis; dissent: Smiley — 9 pages. (11)

### Bargaining Unit

Bookkeeper-accountant position created — not excluded in collective agreement; not involved in budget preparation or confidential matters related to labour negotiations; this job not materially same as one excluded under collective agreement; company directed to comply with collective agreement in setting wage classification and filling position; grievance allowed. *Re Dundas, Corporation of Town of, & C.U.P.E., Loc. 167; policy grievance*, Nov. 25, 1983. Davis — 6 pages. (12)†

Pool supervisors: not thought of when certification granted — intention of parties to include them in definition of "employees" is essential; grievance dismissed. *Re Richmond Hill, Corporation of Town of, & C.U.P.E., Loc. 2471; union policy grievance*, Nov. 28, 1983. Knopf — 11 pages. (13)†

Scope — registered nurses required to be in charge of shifts come within meaning of "supervisors" and are excluded from unit; grievance denied. *Re Village Green Nursing Home Corp. & S.E.U., Loc. 183; policy grievance*, Nov. 22, 1983. Lyon — 8 pages. (14)†

### Classification

Maintenance of new equipment — held to be similar to other work performed by grievor's classification, not a higher one; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees, Loc. 1000; Steen grievance*, Nov. 9, 1983. Majority: Kates, Chatland; dissent: McCullough — 16 pages. (15)

### Collective Agreement

Retroactivity — standards of old collective agreement to apply in reviewing decision of company to discharge grievor made prior to execution of new collective agreement. *Re Eastern Provincial Airways & Canadian Air Line Pilots' Association; Morrison grievance*, Nov. 2, 1983. M. Picher — 23 pages. (16)

Retroactivity — new collective agreement retroactive to time before strike — grievors to get benefit of vacation credit system for period they were on sickness insurance or compensation during strike; grievances allowed. *Re Inglis Limited & U.S.W.A., Loc. 2900; Lalic, O'Connor, Talbot grievances*, Nov. 1, 1983. Jolliffe — 16 pages. (17)†

### Contracting Out

Obligation to review contracting out with union; company meeting with union not sufficiently detailed for union to determine whether bargaining-unit members could perform work — violation of collective agreement but damages not appropriate. *Re Standard Brands Canada Ltd. & U.F.C.W.U., Loc. 1182-5; policy grievance*, Nov. 15, 1983. McKechnie — 9 pages. (18)†

Parking lot attendants resigned, replaced by security guards — national lay-off resulting, but not done with "objective of effecting a lay-off"; grievance dismissed. *Re Doctors' Hospital, Toronto & C.U.P.E., Loc. 1474; union grievance*, Nov. 17, 1983. Majority: Shime, Sergeant; addendum: Sergeant; dissent: Brown — 7 pages. (19)

Part of business shut down; freight transferred to another company — no contractual relationship; not contracting out; grievance dismissed. *Re Brazeau Transport Inc. & Teamsters Loc. 938; union policy grievance*, Nov. 14, 1983. Majority: Adams, Pigott; dissent: Petryshen — 12 pages. (20)

### Damages

Authority to award interest — board has discretion; grievance allowed. *Re Leisure World Nursing Homes Ltd. & S.E.U., Loc. 478; union grievance*, Nov. 28, 1983. Majority: Langille, Lewis; dissent in part: Wisebrod — 16 pages. (21)\*

Award of compensation — quantum based on lost wages and benefits; obligation on grievors to mitigate; interest awarded; employer entitled to offset cash payments already made to grievors. *Re Dellelce Construction and Equipment Ltd. & U.S.W.A., Loc. 7578; Lavallee grievances*, Nov. 28, 1983. Davis — 5 pages. (22)†

Quantum of compensation pursuant to award fixed and directed to be paid with interest; supplementary award. *Re Brantwood Manor Nursing Home & C.U.P.E., Loc. 1712; union grievance*, Nov. 1, 1983. Knopf — 3 pages. (23)†

### Demotion

Disciplinary: failure to follow safety rules — demotion of six months substituted for indefinite demotion; grievance allowed. *Re Whitby Hydro-Electric Commission & C.U.P.E., Loc. 53; Whiteman grievance*, Nov. 18, 1983. Davis — 10 pages. (24)†

Transfer to lower-volume store — dispute settled by maintaining higher rate — grievor nonetheless in low-volume store category for purpose of being bumped; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Loc. 414; Granato grievance*, Oct. 31, 1983. Majority: Brunner, Sergeant; dissent: Dahmer — 10 pages. (25)

### Discharge

Absence without notice — evidence insufficient to establish verifiable illness or reasonable justification for absence; grievor "on notice" because of prior conditional reinstatement — poor performance and absenteeism records; grievance dismissed. *Re Midas Canada Inc. and International Parts Manufacturing Limited & U.S.W.A.; Blair grievance*. See (3), *supra*. (26)\*†

Absenteeism and lateness — discharge resting in part on grievor's record of offences where no discipline imposed; reinstatement with no compensation. *Re Toronto Star Newspaper Limited & Southern Ontario Newspaper Guild, Loc. 87; Anstey grievance*, Nov. 14, 1983. Schiff — 4 pages. (27)†

Absenteeism — employer provided counselling and several opportunities to improve — no reasonable probability of future regular attendance; grievance dismissed. *Re CIP Inc. Container Division (London) & E.C.W.U., Loc. 29; Delmage grievance*, Nov. 22, 1983. Brent — 17 pages. (28)

Absenteeism — medical opinion had been misinterpreted; grievor should be able to perform work for indefinite period of time; conditional reinstatement ordered. *Re Dominion Textiles Inc. & United Textile Workers, Loc. 469; Roderick grievance*, Nov. 1, 1983. Majority: Roine, Bosnick; dissent: Hamilton — 22 pages. (29)

Absenteeism — poor past record — no evidence to support regular attendance; grievance dismissed. *Re VS Services Ltd. (Food Management Services) & Workers' Union of Queen Elizabeth Hospital; Raposo grievance*, Nov. 23, 1983. Burkett — 13 pages. (30)

Alcoholic intoxication at work; grievor long-service employee — potential for rehabilitation demonstrated; conditional reinstatement. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43; Wingrove grievance*, Nov. 24, 1983. Knopf — 24 pages. (31)†

Assault upon foreman — four-month suspension substituted; condition of returning to work is a written apology to be posted for one month. *Re Canadian General-Tower Limited & United Rubber Workers, Loc. 862; McMurrin grievance*, Nov. 22, 1983. Barton — 12 pages. (32)†

Availability for work; grievor part-time employee — suspension substituted for discharge. *Re Parkwood Hospital (Women's Christian Association of London) & London and District Service Workers, Loc. 220; McGee grievance*, Nov. 14, 1983. Welling — 15 pages. (33)†

Conduct of grievor's boyfriend in bar — not relevant consideration — compensation for missed tips ordered and reinstatement to position given to junior employee with equal qualifications. *Re Lighthouse Tavern & International Beverage Dispensers' and Bartenders' Union, Loc. 280; Denaue grievance*, Nov. 2, 1983. Baum — 13 pages. (34)†

Culminating incident — failure to report to work for grievor's scheduled flight — past record showing improvement in performance — reinstatement without compensation or benefits. *Re Eastern Provincial Airways & Canadian Air Line Pilots' Association; Morrison grievance*. See (16), *supra*. (35)

Culminating incident; grievor giving dishonest excuse for absenteeism — no prior period of satisfactory conduct and work performance; work problems not solely attributable to alcohol; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Grant grievance*, Nov. 15, 1983. Majority: Kennedy, Beresford; dissent: Marshall — 16 pages. (36)

Culminating incident; insubordination — refusal to obey order to return to work and insolence — similar previous incidents; grievance dismissed. *Re Toronto Harbour Commission & Toronto Harbour Commissioners' Employees, Loc. 186, C.U.P.E.; Hein grievance*, Nov. 4, 1983. Majority: Betcherman, Churchill-Smith; dissent: Whitney — 8 pages. (37)

Culminating incidents; unsatisfactory job performance — poor disciplinary record; no extenuating circumstances; grievance dismissed. *Re Jewish Community Centre of Toronto & C.U.P.E., Loc. 2256; Levin grievance*, Oct. 12, 1983. O'Shea — 16 pages. (38)†

Economic reasons can constitute cause — lay-off clause is for employer's benefit when not linked to seniority; grievance dismissed. *Re Artcraft Engravers Ltd. (London) & Graphic Arts International Union, Loc. 517; Kleiber grievance*, Nov. 15, 1983. Majority: Barton, White; dissent: Ashworth — 11 pages. (39)

Fraudulent conduct — telephone operators consistently made free long-distance calls — need for general deterrence outweighs grievors' long service and admission of guilt; grievances dismissed. *Re Bell Canada & Communications Workers; Gopaul and Terrill grievances*, Nov. 14, 1983. Majority: Burkett, Filion; dissent: Robbins — 15 pages. (40)

Insubordination — culminating incident; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Metropolitan Toronto Civic Employees, Loc. 43; Walsh grievance*, Oct. 27, 1983. Majority: H. Brown, Perron; dissent: Tate — 57 pages. (41)

Insubordination; profane language directed at management — some indication of provocation; one-month suspension substituted. *Re Durable Equipment Ltd. & Sheet Metal Workers, Loc. 30; Turgeon grievance*, Nov. 14, 1983. Devlin — 13 pages. (42)†

Insubordination; threatening and dangerous behaviour alleged — no proof of allegations; grievance allowed. *Re Westank-Willock, Division of Willock Industries & U.S.W.A.; Stephenson grievance*, Nov. 2, 1983. H. Brown — 25 pages. (43)

Just-cause provision excluded in supplemental agreement applicable to community news correspondents — grievor covered by supplemental agreement; notice given; grievance dismissed. *Re Toronto Star Newspapers Limited & Southern Ontario Newspaper Guild; community news correspondent grievance*, Nov. 7, 1983. Shime, Earle, Tate — 21 pages. (44)

Long-term disability; grievor terminated according to loss of seniority provisions — no reason to believe he was fit to perform any job at company; grievance dismissed. *Re Allied Chemical Company & U.A.W., Loc. 89; Jariett grievance*, Nov. 18, 1983. Kruger — 9 pages. (45)



Poor work attitude and rough treatment of patients — incidents established; previous corrective measures taken; grievance dismissed. *Re Lake of the Woods District Hospital, Kenora & C.U.P.E., Loc. 822; Harris grievance*, Nov. 9, 1983. Phillips — 12 pages. (46)†

Probationary employee — insubordination and abusive language towards supervisor; discharge at sole discretion of employer, but sufficient grounds in any case; grievance dismissed. *Re Canadian A.S.E. Ltd. & U.S.W.A., Loc. 8694; Popwell grievance*, Nov. 21, 1983. Hinnegan — 7 pages. (47)

Punching time card of another employee — preponderance of evidence indicates dishonest intent; poor work record; grievance dismissed. *Re Humpty Dumpty Foods Limited & Retail, Wholesale, Bakery and Confectionery Workers, Loc. 461; Clark grievance*, Oct. 28, 1983. Carter — 5 pages. (48)†

Safety regulation continually ignored — grievance dismissed. *Re Affiliated Medical Products Ltd. & Amalgamated Clothing and Textile Workers, Loc. 1775; Pfrimmer grievance*, Oct. 31, 1983. Boscarior — 9 pages. (49)†

Sexual assault on fellow worker — complainant's evidence preferred; grievance dismissed. *Re St. Joseph's Health Centre & C.U.P.E., Loc. 1144; Flores grievance*, Nov. 23, 1983. R.J. Roberts — 11 pages. (50)†

Sleeping on the job; culminating incident — poor employment record; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & Metropolitan Toronto Civic Employees, Loc. 43; Bell grievance*, Nov. 3, 1983. Lerner — 12 pages. (51)†

Sleeping on job; grievor working as security guard — no compelling reasons why discharge should not apply; grievance dismissed. *Re Brink's Canada Limited & Teamsters Loc. 91, Ottawa; Carriere grievance*, Nov. 21, 1983. McCaughey — 5 pages. (52)†

Theft and falsification of records — fraudulent purchase of safety shoes — mitigating factors; three-month suspension substituted. *Re Canada Cup & E.C.W.U., Loc. 22; Kerr grievance*, Nov. 1983. McKechnie — 9 pages. (53)†

## Discipline

Absence from work without informing supervisor and absence from work station without authorization — grievor had received warning letters and previous one-day suspension for absenteeism or coming in late; grievances dismissed. *Re Toronto Star Newspaper Limited & Southern Ontario Newspaper Guild, Loc. 87; Anstey grievance*. See (27), *supra*. (54)†

Assault alleged: grievor provoked by fellow employee's comments — five-day suspension excessive; two-day suspension with adjustment of compensation and benefits ordered. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Metropolitan Toronto Civic Employees, Loc. 43; Smith grievance*, Oct. 28, 1983. M. Picher — 6 pages. (55)†

Drinking beer in unauthorized location — union failed to prove that being sent home from overtime shift constitutes discipline; grievances dismissed. *Re Labatt's Ontario Breweries Ltd. (Toronto Plant) & Canadian Brewery Workers, Loc. 304; Boudreau and Mueller grievances*, Nov. 7, 1983. Brandt — 10 pages. (56)

Lateness — established on evidence; grievance dismissed. *Re Parrish and Heimbecker Ltd. & U.F.C.W.U.; Gaeler grievance*, Nov. 17, 1983. Majority: M. Picher, Churchill-Smith; dissent: Switzman — 7 pages. (57)

Leaving workplace without permission — early shower at end of shift — rule known to employee; written warning upheld. *Re Eldorado Resources Ltd. & U.S.W.A., Loc. 13173; Collins grievance*, Nov. 22, 1983. Brent — 8 pages. (58)

Negligence causing property damage — negligence not proved but not all precautions taken; written warning substituted for four-day suspension. *Re East York Hydro Commission & I.B.E.W., Loc. 636; Solway grievance*, Oct. 28, 1983. P. Picher, Millman, Moore — 13 pages. (59)

Notations of verbal warnings — not intended as disciplinary; grievance dismissed. *Re De Havilland Aircraft Limited & U.A.W., Loc. 673; policy grievance*, Nov. 8, 1983. Gorsky — 18 pages. (60)

Refusal to adhere to dress code: requirement to wear bathing suit — rule not reasonable; disciplinary action taken without just cause; grievance allowed. *Re Simcoe Hotel & International Beverage Dispensers' and Bartenders' Union, Loc. 280; Kaley grievance*, Nov. 11, 1983. McKechnie — 18 pages. (61)†

Safety violation — failure to wear hard hat at work site — no evidence of any specific inconsistency in discipline; grievance dismissed. *Re Niagara, Regional Municipality of, & C.U.P.E., Loc. 1287; St. Angelo grievance*, Nov. 2, 1983. Majority: Brent, Anderson; dissent: Marshall — 7 pages. (62)

Safety violation — grievors entering dangerous area contrary to express instructions — grievors guilty of negligent inattention to manner in which they perform their duties; grievances dismissed. *Re Metropolitan Toronto, Municipality of, & Metropolitan Toronto Civic Employees, Loc. 43; Radosavljevich, Benjamin, Zaliauskas grievances*, Nov. 7, 1983. O'Shea — 16 pages. (63)†

Three-day suspension imposed for lateness and incapacitation: grievor alleges that five and one-half days lost — grievor to be paid for lost day's wages; disciplinary record amended; grievance allowed. *Re F.W. Fearman Company Limited & U.F.C.W.U., Loc. P1227; suspension grievance*, Nov. 16, 1983. Betcherman — 4 pages. (64)†

Warning letter about innocent absenteeism — held not to be a form of discipline; appropriate to warn before termination; grievance not arbitrable. *Re Denison Mines Ltd. & U.S.W.A., Rave grievance*, Nov. 22, 1983. Adams — 13 pages. (65)\*

## Estoppel

Past practice: payments made in error — no intention to affect legal relationship; grievance dismissed. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43; policy grievance*, Nov. 1, 1983. Majority: Devlin, Milks; dissent: Tate — 18 pages. (66)

## Evidence

Admissibility of disciplinary incident occurring in 1976 — not admissible because grievor not put on notice prior to hearing that company had relied on the incident to justify imposition of discipline; interim award. *Re Ottawa-Carleton, Regional Municipality of, & Ottawa-Carleton Public Employees', Loc. 503; Parsons grievance*, Oct. 26, 1983. Fraser, Switzman, Vice — 13 pages. (67)

## Grievance Procedure

Procedures for policy grievance — no requirement of prior consideration by committees; grievance dismissed. *Re Spar Aerospace Limited & U.A.W., Loc. 112; policy grievance*, Nov. 15, 1983. H. Brown — 10 pages. (68)

Timeliness: alcohol-related problem incapacitating grievor from filing grievance — not to blame for union's subsequent failure to process grievance with due diligence; employer not prejudiced; extension granted. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43; Wingrove grievance*, Nov. 24, 1983. Knopf — 14 pages. (69)\*†

Timeliness — not appropriate to extend time limits; grievance not arbitrable. *Re Tend-R-Fresh Plant United Co-operatives & U.F.C.W.U., Loc. P-1116; Nunes grievance*, Oct. 27, 1983. Majority: H. Brown, Binning; dissent: Switzman — 13 pages. (70)\*

## Holidays

Entitlement to December Sunday holiday — parties agreed to extend terms of previous agreement; holidays named in old agreement would continue to apply; grievance allowed. *Re Chrysler Canada Ltd. & United Plant Guard Workers, Loc. 1958; policy grievance*, Nov. 28, 1983. Samuels — 7 pages. (71)†

## Hours of Work

Coffee breaks to be taken on employer's premises: purpose to diminish instances of late returns — employees could still leave immediate work area by vesting in facilities provided; employees paid during break; rule falls within scope of management-rights clause; grievance dismissed. *Re Royal Ontario Museum & O.P.S.E.U.; policy grievance*, Nov. 16, 1983. Majority: P. Picher, Davies; partial dissent: Millard — 23 pages. (72)\*

## Illness

Notice of return to work — no specific rule requiring notice; grievance allowed. *Re Canadian National Institute for the Blind & S.E.I.U., Loc. 204; McDonald grievance*, Nov. 15, 1983. Baum — 8 pages. (73)†

## Job Evaluation

Machine operator responsible for two rather than one press — significant change in time spent in particular functions; grievance allowed. *Re Decor Metal Products & U.A.W., Loc. 1411; policy grievance*, Nov. 7, 1983. Dunn — 6 pages. (74)

## Job Posting

"Acting principal" and "acting vice-principal" fall within scope of collective agreement requiring internal posting for "principal" and "vice-principal" positions — since school year has passed appointments already made will not be set aside; association entitled to declaration that school board erred in failing to post vacant jobs; grievance allowed. *Re Hamilton-Wentworth Roman Catholic Separate School Board & Ontario English Catholic Teachers' Association; policy grievance*, Nov. 3, 1983. Dunn, Whelan, Nelson — 4 pages. (75)

Notice of job openings — failure of employer to provide information about job positions available with sufficient particularity resulted in grievor not being able to make a reasoned judgement about position for which to apply; grievor reinstated to waitress position with full compensation. *Re 467151 Ontario Limited operating as the Crest Hotel and Hotel Employees, Restaurant Employees, Loc. 75; Baraniuk grievance*, Nov. 18, 1983. Davis — 9 pages. (76)†

Qualifications — grievor's qualifications adequate; insufficient evidence of change in standards; grievance allowed. *Re Ryerson Polytechnical Institute & Canadian Union of Educational Workers, Loc. 4; McGuire grievance*, Oct. 28, 1983. Carter; partial dissent: Myhr; dissent: Rogers — 44 pages. (77)

## Job Vacancy

Existence of vacancy — new job but complement of group remaining same; no new vacancy; grievance dismissed. *Re Brown Boveri Howden Inc. & International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Loc. 637; union grievance*, Sept. 27, 1983. Majority: Barton, Phelps; dissent: Pratt — 10 pages. (78)

Full-time employee transferred to new location and replaced by series of part-time employees — no obligation for employer to maintain numbers of full-time employees; grievance dismissed. *Re Zehrs Markets & Retail Clerks Union, Loc. 1977; policy grievance*, Nov. 11, 1983. Betcherman — 4 pages. (79)†

Notification — collective agreement does not require employer to post job vacancies but vacancies must be brought to attention of eligible persons; matter remitted back to employer for determination; grievance allowed. *Re Kingston General Hospital & O.P.S.E.U.; Hey grievance*, Nov. 10, 1983. Willes — 15 pages. (80)†

## Lay-off

Bumping rights — grievor not entitled to avail himself of promotion procedures applicable to a posted job vacancy although he was bumped into higher classification; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Loc. 5980; Vincent grievance*, Nov. 9, 1983. Brunner — 8 pages. (81)

Bumping rights: replacement worker laid off — employer justified in returning absent employee to his former job; no discrimination against grievor; no right to bump; grievance dismissed. *Re Greey Lightning & U.S.W.A., Loc. 8030; Pal Bal grievance*, Nov. 3, 1983. Swan — 15 pages. (82)

Limitations on reductions in staff complement — clause relied on by federation applies only when fall actual enrolment differs from projected figure, not to arrive at annual complement; grievance dismissed. *Re Lennox and Addington County Board of Education & Branch Affiliate of O.P.S.T.F. and Federation of Women Teachers' Association of Ontario; Branch Affiliate grievance*, Nov. 14, 1983. Majority: Burkett, Riddell; dissent: Mangan — 23 pages. (83)

Non-bargaining unit employee retained while bargaining-unit member laid off — collective agreement clear and unambiguous; company ordered to recall grievor and reimburse him for lost pay and benefits less amount of wages he may have earned in alternate employment; grievance allowed. *Re Nelson Burns & Co. Ltd. & International Leather Goods, Plastic and Novelty Workers, Loc. 8; policy grievance*, Nov. 8, 1983. Adamson — 6 pages. (84)†

Qualifications — employer did not lay off in proper order of seniority — nevertheless, grievor did not establish that he was qualified to do the remaining work; grievance dismissed. *Re Dorr-Oliver Canada Ltd. & U.S.W.A., Loc. 4697; Aftab grievance*, Nov. 1, 1983. Majority: Brunner, Binning; dissent: Berry — 18 pages. (85)

Qualifications — employer's evidence established grievor's lack of skill and experience; grievance dismissed. *Re Dresser Canada Inc., Industrial Division Cambridge (Galt) Plant & U.S.W.A., Loc. 5475; Myers grievance*, Oct. 27, 1983. O'Shea — 15 pages. (86)



Qualifications — following training period grievor unable to demonstrate necessary skill and ability to perform full requirements of job claimed; grievance dismissed. *Re Westinghouse Canada Inc. & U.E., Loc. 555; Harkness grievance*, Nov. 10, 1983. O'Shea — 22 pages. (87)†

Qualifications — not possible to say grievors still in contractually established "leaner period" are qualified; grievances dismissed. *Re Babcock and Wilcox Canada Ltd. & U.S.W.A., Loc. 2859; Formica et al grievances*, Sept. 30, 1983. Majority: O'Shea, Simpson; dissent: Wilton — 15 pages. (88)

Qualifications: consideration of health — no medical evidence to show any restrictions or potential aggravation; grievance allowed. *Re Woodbridge Foam Corporation & Amalgamated Clothing and Textile Workers, Loc. 1438; Samuels grievance*, Nov. 15, 1983. Majority: Brent, Clark; dissent: MacLeod — 15 pages. (89)

#### Leave of Absence

No clause in collective agreement qualifying or limiting company's right to refuse or grant leave of absence — arbitrator has no jurisdiction to proceed; grievance not arbitrable. *Re Dominion Metalware Industries Limited, Mississauga & Sheet Metal Workers, Loc. 540; Ellison grievance*, Nov. 22, 1983. Egan — 6 pages. (90)†

Retroactive application by grievor for special one-day leave of absence to enable grievor to tend spouse ill at home — not in discretion of employer; grievance allowed. *Re Ottawa, Corporation of City of, & Ottawa-Carleton Public Employees, Loc. 503; Wallingford-Simpson grievance*, Nov. 3, 1983. Majority: Teplitsky, Walsh; dissent: Tunney — 7 pages. (91)

#### Management Rights

New rules regarding lateness and absenteeism imposed unilaterally by company and affecting only part of bargaining unit, discriminatory new standards conflicting with those in collective agreement; grievance allowed. *Re Spar Aerospace Limited & U.A.W., Loc. 212; policy grievance*, Nov. 15, 1983. H. Brown — 10 pages. (92)\*

#### Maternity Benefits

Entitlement where grievors "eligible for" Unemployment Insurance benefits — collective agreement addresses issue of women not eligible for benefits at all; does not guarantee to cover maternity benefits for total of fifteen weeks to those who receive some benefits; grievances dismissed. *Re Van Dresser Limited & U.A.W., Loc. 1524; Gibson and Finney grievances*, Nov. 17, 1983. Brunner — 12 pages. (93)

#### Overtime

Distribution: overtime to be distributed as equally as is "reasonably practicable" — reasonably practicable includes consideration of economic factors; to call in grievor would require company to pay additional employee who would not have been working throughout; grievance dismissed. *Re E.S. Fox Limited & U.S.W.A., Loc. 8979; Bacon grievance*, Nov. 22, 1983. Devlin — 11 pages. (94)†

Distribution — overtime opportunity offered only as two-day package; accepted only by employees outside regular classification; agreement not violated; grievance dismissed. *Re Phillips Cables Ltd. & U.S.W.A., Loc. 7276; Wall grievance*, Nov. 25, 1983. Betcherman — 4 pages. (95)†

Scheduling — grievor not given equal share; grievance allowed. *Re Atlantic Packaging & International Woodworkers; Portelli grievance*, Nov. 2, 1983. Langille — 19 pages. (96)†

#### Overtime Pay

Calculation of hours — sick-leave hours not included in calculation of hours worked; grievances dismissed. *Re Fleetwood Ambulance Service & O.P.S.E.U., Loc. 207; Miller and Mills grievances*, Nov. 15, 1983. Majority: Samuels, MacLeod; dissent: Switzman — 5 pages. (97)

#### Premium Pay

Call-in pay — public health nurse not entitled in circumstances where she decides to return to work to perform overtime rather than at the request of employer; grievance dismissed. *Re Toronto, City of, & C.U.P.E., Loc. 79; Dubas grievance*, Nov. 14, 1983. P. Picher — 15 pages. (98)

Shift premiums — payable for seven days a week, twenty-four hour a day rotation only where twenty-four hours worked per day; grievance dismissed. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43; policy grievance*. See (66), *supra*. (99)

Work done on day in lieu of holiday occurring during annual vacation — agreement silent — premium pay not required; grievance dismissed. *Re General Home Systems Ltd. & United Brotherhood of Carpenters and Joiners, Loc. 3054; Millar et al grievance*, Oct. 31, 1983. Lerner — 9 pages. (100)†

#### Promotion

Fairness of examination used to test candidates ability in job competition — questions relevant and information available to all candidates who wished to obtain it; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Loc. 79; Goodall grievance*, Nov. 8, 1983. Brent — 15 pages. (101)

Lay-off not disentiitling grievor from consideration of his application for a position — application made prior to lay-off; grievance allowed — competition reopened. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Loc. 43; Mitchell grievance*, Nov. 10, 1983. Majority: Swinton, Tate; dissent: Beresford — 14 pages. (102)\*

Qualifications — company under no obligation to provide training for job; trial period in job only for those who have basic qualifications; grievor lacking minimum qualifications; grievance dismissed. *Re Russelsteel, Division of York Russel Inc. & U.S.W.A., Loc. 5958; Buttaro grievance*, Nov. 18, 1983. Black — 8 pages. (103)†

Qualifications — grievor having negative, uncooperative attitude and counter-productive influence; unable to properly perform job of trainer; grievance dismissed. *Re Steinberg Inc. & U.F.C.W.U., Loc. 633; Quinn grievance*, Nov. 3, 1983. O'Shea — 29 pages. (104)†

Qualifications — grievor more senior and capable of performing duties; grievance allowed in part. *Re Sarnia General Hospital & London and District Service Workers, Loc. 220; Murphy grievance*, Oct. 28, 1983. Majority: Adams, Lewis; partial dissent: Anissimof — 11 pages. (105)

Qualifications — incumbent's seven years experience on the floor in question makes a substantial difference; grievance dismissed. *Re St. Peter's Hospital & C.U.P.E., Loc. 778; Campbell grievance*, Nov. 7, 1983. Barton — 10 pages. (106)

Qualifications — qualifications not satisfied during temporary placement used as basis for denying future placement; grievance dismissed. *Re Ottawa Civic Hospital & C.U.P.E., Loc. 576; Campbell grievance*, Nov. 21, 1983. Majority: Kates, Cyr; dissent: Benard — 14 pages. (107)

Qualifications — three-month trial period not applicable where grievor lacks reasonable educational requirements or equivalent; grievance dismissed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; Mongrain grievance*, Nov. 28, 1983. Davis — 11 pages. (108)†

Qualifications: employer requiring applicants to take written test — tests suitable method to determine most qualified applicant for job; grievance dismissed. *Re Windsor, Corporation of City of, & Windsor Municipal Employees' Loc. 82, C.U.P.E.; policy grievance*, Oct. 24, 1983. Ord — 11 pages. (109)†

Qualification for job competition — company erred in considering as eligible employee who was not a member of bargaining unit; applicable criteria for selection those stated in "transfer" provision; grievance allowed in part. *Re Lawson Graphics & Graphic Arts International Union, Loc. 28-B; Leblanc grievance*, Oct. 28, 1983. Majority: Brandt, Buhler; dissent: Smith — 9 pages. (110)

Qualifications for tenure — original research not essential requirement in determining equivalence waiver; grievance allowed. *Re Laurentian University & Laurentian University Faculty Association; Bastin-Miller grievance*, Nov. 21, 1983. Mullian, Craven, Rose — 17 pages. (111)

#### Recall

Qualifications — employer could not require specialist certificate from grievor when it did not require one from employee hired; grievance allowed. *Re Essex County Roman Catholic Separate School Board & Branch Affiliate of Ontario English Catholic School Teachers' Association and Branch Affiliate of L'Association des Enseignants Franco-Ontariens; Kersey grievance*, Nov. 2, 1983. Hinnegan; partial dissent: Koskie; dissent: Kavanaugh; addendum: Hinnegan — 27 pages. (112)

Qualifications — grievor unable to learn job previously recalled to — agreement allows employer discretion on reasonable assumption he will not be able to perform job in question; grievance dismissed. *Re Lennox Industries (Canada) Ltd. & U.S.W.A., Loc. 7235; Lysy grievance*, Nov. 11, 1983. Kennedy — 20 pages. (113)\*

Qualifications — qualifications for specific job, not met; grievance dismissed. *Re Jarvis Clark Co. Ltd. & U.S.W.A., Loc. 7282; Quesnal grievance*, Nov. 18, 1983. Majority: Hinnegan, Storie; dissent: Keuhl — 9 pages. (114)

Start-up — company "making every reasonable effort" to recall employee according to departmental seniority; grievance dismissed. *Re Stelco Inc. (Hilton Works) & U.S.W.A., Loc. 1005; MacPhee grievance*, Nov. 24, 1983. Majority: R.J. Roberts, Baker; dissent: Marshall — 9 pages. (115)

#### Redundancy

Technological change making position formerly held by grievor unnecessary — duties have substantially disappeared — grievor assigned to only position available; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Loc. 79; Miljko grievance*, Nov. 11, 1983. Brandt, Hayter, Lewis — 9 pages. (116)

#### Scheduling of Work

Shift switching — grievor's replacement missed shift; duty to pay "replacement costs"; means entire wages paid to employee who actually worked; grievance dismissed. *Re Superior Ambulance Ltd. & O.P.S.E.U.; Nelles grievance*, Nov. 23, 1983. McKechnie — 7 pages. (117)†

#### Seniority

"Craft group seniority"—employer obliged to retain senior employee in craft group in which lay-off occurred; grievance allowed. *Re Frito-Lay Canada Ltd. & Retail, Commercial and Industrial Union, Loc. 206; Homer grievance*, Nov. 10, 1983. Majority: Saltman, Rudrum; dissent: Carrier — 11 pages. (118)

Return to bargaining unit — employee entitled to full seniority rights including bumping rights; grievance dismissed. *Re Algoma Ore Division of Algoma Steel & U.S.W.A., Loc. 5048; policy grievance*, Nov. 10, 1983. Barton — 10 pages. (119)†

#### Transfer

Qualifications — ministerial directive demanding certain "paper" qualifications to operate new equipment — no transfers allowed where qualifications not met; grievance dismissed. *Re Halton and Mississauga Ambulance Service Ltd. & O.P.S.E.U.; policy grievance*, Nov. 18, 1983. Kruger — 14 pages. (120)

Transfer to different assembly line — decision to transfer neither discriminatory or arbitrary; grievance dismissed. *Re Great Northern Apparel Inc. (Levi Strauss Division) & Amalgamated Clothing and Textile Workers, Loc. 1136; group grievance*, Nov. 24, 1983. Little — 20 pages. (121)

#### Vacation Pay

Successor employer — purchaser responsible for all payments due incurred before purchase; grievance allowed. *Re Almont Hotel & International Beverage Dispensers' and Bartenders' Union, Loc. 280; policy grievance*, Oct. 25, 1983. McKechnie — 5 pages. (122)†

Vacation bonus — laid-off employees unable to meet necessary minimum hours to receive bonus — bonus not receivable; grievance dismissed. *Re Armco Canada Ltd. & U.S.W.A., Loc. 4054; policy grievance*, Nov. 14, 1983. Jolliffe — 15 pages. (123)†

#### Wages

Denial of annual increment — ample grounds for employer to conclude that grievor's work performance deficient; grievance dismissed. *Re Toronto, City of, & C.U.P.E., Loc. 79; Dyal grievance*, Nov. 11, 1983. M. Picher — 14 pages. (124)

Employer failed to pay grievors' wages they were entitled to — employer ordered to pay; grievances allowed. *Re Orchard Park Tavern & International Beverage Dispensers' and Bartenders' Union, Loc. 280; group grievance*, Nov. 15, 1983. Rubenstein — 15 pages. (125)†

Pay in lieu of benefits — based on hours paid for, not hours worked; grievance allowed. *Re Leisure World Nursing Homes Ltd. & S.E.U., Loc. 478; union grievance*. See (21), *supra*. (126)\*

Pay protection not provided where flight attendant is awarded lower-paying block of flights on basis of language requirements than if seniority were sole governing factor; grievances dismissed. *Re Wardair Canada (1975) Ltd. & C.A.L.F.A.; policy grievances*, Oct. 4, 1983. Burkett — 21 pages. (127)



Time change — extra hour to be paid when time change occurs in the fall; one hour less to be paid at time change in the spring; grievance allowed. *Re Victoria Hospital Corporation & O.N.A.; policy grievance*, Nov. 1, 1983. Majority: Teplitsky, McIntyre; dissent: Winkler—4 pages. (128)

#### Welfare Plans

Extended health care benefits — vitamins E and support hose not covered as prescription drugs — coverage depending upon terms of policy — company's obligation to arrange coverage, pay premiums and process claim discharged; grievance dismissed. *Re Great Lakes Forest Products Limited & Canadian Paperworkers, Loc. 39; Crocombe grievance*, Oct. 24, 1983. Majority: O'Shea, Holt; dissent: Stencer — 15 pages. (129)

#### Work Assignment

Change in job duties — change in duties did not amount to new classification which would affect wages; grievances dismissed. *Re Grandview Industries Limited & International Molders and Allied Workers, Loc. 28; policy and group grievances*, Nov. 7, 1983. McLaren — 12 pages. (130)

Employer requiring employees to perform "outside work" — collective agreement silent on job description — practice has been followed for seventeen years — collective agreement does not address job descriptions or work assignments; grievance dismissed. *Re Wyeth Limited & E.C.W.U., Loc. 599; policy grievance*, Oct. 31, 1983. Knopf — 9 pages. (131)†

Inventory work — held not to be bargaining-unit work even though some work in the past done by unit members — seniority does not apply; grievance dismissed. *Re Dresser Canada Inc., Industrial Products Division, Cambridge (Galt) Plant, & U.S.W.A., Loc. 5475; Contini grievance*, Oct. 28, 1983. O'Shea — 14 pages. (132)

Line of progression altered — no loss of employment or loss of seniority — union notified of changes through C.W.S. committee; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; policy grievance*, Nov. 14, 1983. O'Shea — 22 pages. (133)

New job allegedly created with lower-pay classification — strikingly similar to existing job; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5980; union grievance*, Nov. 28, 1983. Adams — 18 pages. (134)

Non-teaching duties assigned to part-time teachers — no infringement upon bargaining unit; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; policy grievance*, Nov. 28, 1983. Brunner, Hoddle, Robbins — 12 pages. (135)

Temporary transfer: change of process during shift resulting in lower job classification — no evidence of company's production requirements to justify transfer; grievance allowed. *Re Robson-Lang Leathers Ltd. & Ontario Council of Leather Workers and United Food and Commercial Workers, Loc. 0485; Gallant and Carvalito grievances*, Nov. 17, 1983. Majority: O'Shea, Gentile; dissent: Noonan — 12 pages. (136)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the months of November and December, 1983, and January and February, 1984.

*Belleville General Hospital & S.E.I.U., Loc. 183 (technical unit); (supplementary award)*. Majority: Barton, Lewis; dissent: Kort — 34 pages.

*Deep River and District Hospital & O.P.S.E.U. Baum, Stansel Lewis* — 11 pages.

*F.J. Davey Home for Aged & O.N.A.* Satlman, Yukich, Switzman — 20 pages.

*Idylwild Rest Home & London and District Service Workers Loc. 220.* Saltman; dissents: Wilson, Lewis — 32 pages.

*Oaklands Regional Centre & O.N.A. (part-time).* Majority: Swan, Paliare; dissent: Sargeant — 16 pages.

*Participating Hospitals (11) & London and District Service Workers, Loc. 220 (part-time); (supplementary).* Saltman; concurring with one exception: Sargeant, Robbins — 365 pages.

*Temiskaming Hospital & O.P.S.E.U., Loc. 646; (interim award).* H. Brown, Graham, Lewis — 8 pages.

*Villa Colombo Homes for Aged Inc. & O.N.A.* D. Scott, Churchmuch, Paliare; addendum: Paliare — 16 pages.

*Villa Colombo Homes for Aged Inc. & C.U.P.E.; (supplementary award).* Majority: McKechnie, Churchmuch; dissent: Robbins — 15 pages.

*Village Retirement Centre (Community Nursing Homes Limited) & O.N.A. (full-time).* Majority: Black, Filion; dissent: Mayne — 59 pages.

*Village Retirement Centre (Community Nursing Homes Limited) & O.N.A. (part-time).* Majority: Black, Filion; dissent: Mayne; addendum: Filion — 38 pages.

#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour

Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1978, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

The following people have been approved for inclusion on the approved panel of arbitrators by the Minister of Labour, The Honourable R.H. Ramsay:

Mr. George William Adams, Q.C., Lockwood, Bellmore and Moore, Barristers and Solicitors, 439 University Avenue, Suite 1440, Toronto, Ontario, M5G 1Y8; telephone (416) 598-2323.

Mr. Donald Graham Pyle, 1101 Ambleside Drive, Ottawa, Ontario, K2B 8E2; telephone (613) 820-6095.

Mr. Ian Guy Thorne, Barrister and Solicitor, Box 1055, 93 Clarence Street, Kingston, Ontario, K7L 4Y5; telephone (613) 544-1833. Mr. Thorne is a graduate of the 1983 Arbitrator Development Program sponsored by the Minister of Labour's Labour-Management Advisory Committee.

Ms. Gail Brent will be on vacation during the month of July, 1984, and her office will be closed for that period.

Professor Donald D. Carter will be on sabbatical leave from July 1, 1984 until June 30, 1985. During that time, Professor Carter will not be available to accept arbitration appointments.

## Change of Address

The following changes should be noted effective immediately:

Ms. Paula S. Knopf, 44 Charles Street West, Suite 4409, Toronto, Ontario, M4Y 1R8; telephone (416) 964-6661.

Mr. Richard H. McLaren, P.O. Box 113, Station B, 383 Richmond Street, Suite 1106, London, Ontario, N6A 4V6; telephone (519) 679-1407 (unchanged).



## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of December, 1983. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

### Arbitrability

Arbitrator appointed under s. 45 of *Labour Relations Act* does not have power to extend time for referring matter to arbitration; grievance dismissed. *Re Reynolds Extrusion Company Limited & U.S.W.A., Loc. 8412; individual grievance*, Dec. 14, 1983. Knopf — 5 pages. (1)†

Discriminatory promotion alleged — position outside bargaining unit; City's Promotion Policy and Guidelines apply; Guidelines incorporated into collective agreement by reference — breach of Guidelines is arbitrable; employer's objection dismissed. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Pendergrast and Williams grievances*, Nov. 30, 1983. Saltman — 10 pages. (2)

Probationary employee given no substantive rights in collective agreement with regard to seniority and termination — no bad faith established; grievance dismissed. *Re Coca-Cola Ltd. & United Brewery Workers; Jaggard grievance*, Dec. 13, 1983. Adams — 11 pages. (3)\*

Probationary employee terminated for absenteeism — grievor not terminated for exercising a right under collective agreement; grievor not covered by collective agreement; grievance not arbitrable. *Re Victoria Hospital Corporation & O.N.A.; Gibbons grievance*, Dec. 5, 1983. Majority: Brent, Winkler; dissent: Switzman — 8 pages. (4)

Settlement alleged — not established; grievance arbitrable. *Re Herb Fraser and Associates & U.S.W.A., Loc. 7022; Mester grievance*, Dec. 9, 1983. Verity — 16 pages. (5)†

Settlement alleged — ratification by membership not necessary for binding settlement; grievance dismissed. *Re St. Catharines Transit Commission & A.T.U., Loc. 846; Pye grievance*, Dec. 7, 1983. O'Shea — 12 pages. (6)

### Bargaining Unit

Electronic technicians — similar to former excluded technician position affected by technological change; field-service work is not work "at" the plant; grievance dismissed. *Re Gilbarco Canada Ltd. & Canadian Union of Golden Triangle Workers; union policy grievance*, Dec. 15, 1983. O'Shea — 17 pages. (7)

Part-time and sessional instructors — grievors teaching for less than requisite amount of time — not in bargaining unit; grievance dismissed. *Re Ryerson Polytechnical Institute & Graduate Assistants' Association, Loc. 4; Redfern and Jessionka grievance*, Dec. 8, 1983. Majority: Howe, Rogers; dissent: Sanders — 44 pages. (8)

Sales-distribution representative — no significant change from previous management designation; oriented toward sales not production; grievance dismissed. *Re Chrysler Canada Ltd. & U.A.W., Loc. 1498; union grievance*, Dec. 6, 1983. Kennedy — 13 pages. (9)

## Bereavement Leave

Entitlement — 'three days' means calendar days unless restricted to 'working days' — grievor denied third day since only two work days occurred during applicable time period; grievance dismissed. *Re Toronto Transit Commission & C.U.P.E., Loc. 2; Shill grievance*, Dec. 21, 1983. P. Draper — 6 pages. (10)†

## Call-in Pay

Entitlement — grievor who was requested to come in for work upon his return home after working regularly-scheduled shift entitled; grievance allowed. *Re Allied Chemical Canada Limited & U.A.W., Loc. 89; D'Alimonte grievance*, Dec. 7, 1983. Kruger — 9 pages. (11)

## Classification

Higher classification sought — newly created Group C Systems Technologist — grievor qualified both in leadership skills and technical expertise in his area; grievance allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Trella grievance*, Dec. 5, 1983. M. Picher — 12 pages. (12)

Performance of other than regular job — union failed to show job normally performed by persons in higher classification; grievance dismissed. *Re Gates Canada Inc. & United Rubber Workers, Loc. 733; Barrieau grievance*, Dec. 16, 1983. Devlin — 8 pages. (13)†

## Contracting Out

Snow-removal work — clause restricting work assignment only intended to apply to supervisory personnel not independent contractors; grievance dismissed. *Re Barrie, City of, & C.U.P.E., Loc. 1583; policy grievance*, Dec. 21, 1983. Boscariol — 7 pages. (14)†

## Damages

Calculation of compensation payable on reinstatement — employer not entitled to make deduction on account of probable absence for sickness — employer entitled to deduct and remit the appropriate amount for income tax; supplementary award. *Re Casselman Nursing Home & C.U.P.E., Loc. 3030; Clerous grievance*, Dec. 20, 1983. Lyon — 5 pages. (15)†

## Discharge

Absenteeism: admission that grievor's disability continues for indefinite duration — no obligation to retain employee on workmen's compensation; grievance dismissed. *Re Midas Canada Inc. and International Parts Mfg. Ltd. & U.S.W.A.; Makki grievance*, Dec. 7, 1983. Schiff — 5 pages. (16)

Absenteeism — favourable prognosis, grievor's long service, time lost in work-related injury considered; conditional reinstatement without compensation. *Re Dominion Stores Ltd. & R.W.D.S.U., Loc. 414; McCharles grievance*, Dec. 5, 1983. Majority: M. Picher, Spaxman; dissent: Sergeant — 15 pages. (17)

Absenteeism — grievor previously warned concerning absenteeism; long-service employee; suspension substituted. *Re Omstead Foods Limited & Teamsters, Loc. 880; Sabelli grievance*, undated. Majority: McCulloch, Laub; dissent: Bartlet — 12 pages. (18)

Absenteeism — long history of extensive absenteeism due to work-related injury — employer not discharging onus that grievor incapable of performing job at present; grievance allowed. *Re Sudbury, City of, & C.U.P.E., Loc. 1662; Douglas grievance*, Dec. 20, 1983. Knopf — 11 pages. (19)†

Alcoholism — grievor losing driver's licence necessary for his work — company rule fair; disposition of case settled by parties. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Loc. 43; Howard grievance*, Dec. 1, 1983. Kennedy — 4 pages. (20)†

Alcoholism — odour of alcohol on breath alleged following agreement of grievor not to drink; company unable to prove presence of alcohol; grievance allowed. *Re Alcan Products Limited (Kingston) & U.S.W.A.; Botting grievance*, Dec. 8, 1983. Delisle — 6 pages. (21)†

Alcoholism — post-discharge conduct relevant; conditional reinstatement without compensation. *Re Molson's Brewery (Ontario) Limited & United Brewery Workers, Loc. 304; individual grievance*, Dec. 8, 1983. Adell — 20 pages. (22)\*

Assault upon supervisor — good past record — long service — reinstatement without compensation. *Re Massey-Ferguson Industries Limited & U.A.W., Loc. 458; Patel grievance*, Dec. 12, 1983. Little — 15 pages. (23)

Assault upon supervisor — not premeditated — no serious injury — long-service employee with previously good record — conduct not likely to recur; grievance allowed. *Re Bell Canada & Communications Workers; Walters grievance*, Dec. 12, 1983. Majority: Springate, Walsh; dissent: Churchill-Smith — 16 pages. (24)

Culminating incident — careless work performance; reinstatement to less responsible position and without compensation. *Re Canada Wire and Cable Limited & U.A.W., Loc. 1285; Ormerod grievance*, Dec. 13, 1983. Gorsky — 10 pages. (25)

Culminating incident — cashier repeatedly leaving post; grievance dismissed. *Re Sheraton Centre Hotel & Hotel, Restaurant and Cafeteria Employees, Loc. 75; Thompson grievance*, Dec. 13, 1983. Egan — 6 pages. (26)†

Culminating incident — continued leaving of job at end of shift when required to work overtime; grievance dismissed. *Re F.W. Fearman Company & U.F.C.W.U., Loc. 1227; Berry grievance*, Nov. 30, 1983. Lerner — 16 pages. (27)†

Culminating incident; insubordination alleged — not established on evidence; grievance allowed. *Re Saville Food Products Inc. & U.F.C.W.U., Loc. 1105P; Hockley grievance*, Nov. 4, 1983. Majority: Ord, Robbins; dissent: Kazdan — 14 pages. (28)

Culminating incident not established — company considered time-barred previous incidents of discipline in arriving at decision; decision to discharge a nullity; grievance allowed. *Re Labatt's Ontario Breweries Limited (Toronto) & United Brewery Workers, Loc. 304; Rawlings grievance*, Dec. 5, 1983. McLaren — 16 pages. (29)

Culminating incident; unauthorized absence — grievor employed for short period of time, poor past work record, present misconduct of a serious nature; grievance dismissed. *Re Canada Packers Incorporated & U.F.C.W.U., Loc. 114P; McLeod grievance*, Dec. 2, 1983. Hunter — 19 pages. (30)†

Disability of grievor to work alleged — not established — conditional reinstatement for light duties; no compensation. *Re Scarborough, Borough of, & Scarborough Civic Employees, Loc. 368; Brennan grievance*, Dec. 2, 1983. McLaren, Smeenk, Hodges — 11 pages. (31)

Incarceration for cocaine trafficking — not a legitimate reason for leave of absence — absence a just cause for discharge considering grievor's criminal record, short seniority and poor work record; grievance dismissed. *Re Fraser Inc., Thorold Division & Canadian Paperworkers, Loc. 290; Pizzacalla grievance*, Dec. 14, 1983. Majority: Adams, Wright; dissent: Weisbach — 16 pages. (32)

Insubordination — verbal abuse and threats to supervisor — no evidence of prior discipline for insubordination — suspension substituted. *Re Ram Partitions Division of Indal Limited & U.S.W.A., Loc. 2729; Starace grievance*, Dec. 15, 1983. Betcherman — 6 pages. (33)

Physical inability to perform job alleged — three-month trial period at smaller postal station ordered. *Re Canada Post Corporation & C.U.P.W.; individual grievance*, Dec. 15, 1983. Teplitsky — 2 pages. (34)

Physical incapacity — medical evidence contradictory as to both present capacity and prognosis; conditional reinstatement ordered. *Re Elan Tool and Die Ltd. & U.A.W., Loc. 127; Bechard grievance*, Dec. 16, 1983. Brent — 15 pages. (35)

Quit alleged — continuous intention found as well as consistent acts; grievance dismissed. *Re Hydro-Electric Commission of North Bay & C.U.P.E., Loc. 72; Ingram grievance*, Nov. 28, 1983. Duchesneau-McLachlan — 6 pages. (36)†

Quit alleged: failure to return following strike — grievor contacted employer explaining reason; no intent to quit or inconsistent act found; grievance allowed. *Re TDL Woodtreating & C.U.O.E., Loc. 101; Bradley grievance*, Dec. 5, 1983. Brunner — 10 pages. (37)†

Sleeping on premises after hours following eviction from apartment — two-month suspension substituted. *Re Nacan Products & E.C.W.U., Loc. 819; Smith grievance*, Dec. 6, 1983. Wilson — 8 pages. (38)†

Work performance: grievor failed to meet reasonable standards of performance over a number of months — had previously demonstrated above-average work — employer afforded grievor opportunity to correct behaviour — grievor took no steps toward correction; grievance dismissed. *Re Harbour Castle Hilton Hotel (Toronto) & Textile Processors, Service Trades, Health Care, Professional Technical Employees, Loc. 351; Patching grievance*, Nov. 30, 1983. Davis — 14 pages. (39)\*

#### Discipline

Absenteeism — overstaying sick leave by one day — grievor honestly believing entitlement to be absent based on doctor's prognosis; no prior disciplinary record; suspension reduced. *Re Thomas Built Buses of Canada Limited & U.A.W., Loc. 636; Darken grievance*, Dec. 12, 1983. R.J. Roberts — 10 pages. (40)†

Dangerous operation of fork-lift alleged — no reason to disbelieve company witness; grievance dismissed. *Re Gates Canada Inc. & United Rubber Workers, Local 733; Newton grievance*, Dec. 20, 1983. Barton — 6 pages. (41)†

Discussion of internal company business with customer — good past record; loss of preferred tours and of one week's pay substituted for thirty-day suspension. *Re Trentway-Wager Inc. & Trent-Wager Employees; Amey grievance*, Nov. 28, 1983. Hinnegan — 12 pages. (42)



Insubordination alleged — supervisor to be more explicit in stating his expectation that grievor report to particular location — grievor demonstrating sullen, resentful attitude; warning substituted. *Re Cadillac Fairview Corporation & I.U.O.E.*; *Evans grievance*, Dec. 20, 1983. Adamson — 11 pages. (43)†

Insubordination; failure to comply with order of supervisor — frivolous health and safety excuses advanced; grievance dismissed. *Re Walker Exhaust & U.S.W.A., Loc. 2894*; *Stuart grievance*, Nov. 25, 1983. O'Shea — 20 pages. (44)

Insubordination — grievor did not follow supervisor's orders — grievor has good past record — record must be given weight in deciding appropriate punishment — grievor's act out of character; suspension reduced to balance of shift and one day following, grievor to be paid for other day lost due to suspension. *Re Westinghouse Canada Inc. & U.E., Loc. 512*; *Majoros grievance*, Dec. 13, 1983. Egan — 5 pages. (45)†

Leaving work early to wash up: verbal abuse of foreman — penalty too severe; written warning substituted. *Re Chicago Rawhide Products Canada Limited & U.A.W., Loc. 397*; *Brown grievance*, Nov. 30, 1983. Brent — 10 pages. (46)†

Letter drawing attention of employee to employer's policy with respect to absenteeism and its concern over grievor's rate of absenteeism not disciplinary; grievance denied. *Re Certified Brakes & U.S.W.A., Loc. 14831*; *Roma grievance*, Dec. 9, 1983. Baum — 11 pages (47)

Letter of reference containing negative comments — not subject to arbitration as disciplinary action; grievance dismissed. *Re New Orchard Lodge, Extendicare Ltd. & O.N.A.*; *Thibodeau grievance*, Dec. 22, 1983. Majority: Swinton, Bernardo; dissent: McIntyre — 18 pages. (48)\*

Failure to report to work alleged — not established; grievance allowed. *Re Labatts Ontario Breweries Ltd. & National Brewery Workers, Loc. 1*; *Meharg grievance*, Dec. 1, 1983. Brandt — 11 pages. (49)

Procedure; grievor not informed of right to have steward present at meeting — language in collective agreement mandatory; failure to comply renders discipline imposed void *ab initio*; employer to remove disciplinary letters from grievor's file — grievor to be reimbursed for wages and benefits lost; grievance allowed. *Re Toronto Western Hospital & C.U.P.E., Loc. 1774*; *Valerio grievance*, Dec. 14, 1983. Houston — 8 pages. (50)†

Sleeping on job — past record clean; three-day suspension substituted. *Re Northwestern General Hospital & C.U.O.E., Loc. 101*; *Paul grievance*, Dec. 14, 1983. Betcherman — 6 pages. (51)†

Verbal and physical abuse of foreman — three-week suspension within reasonable range of employer responses; grievance dismissed. *Re Rolland Inc. & Canadian Paperworkers, Loc. 310*; *Dioleta grievance*, Dec. 8, 1983. Majority: MacDowell, Redford; dissent: Paxton — 24 pages. (52)\*

Work performance — employer not discharging burden of proof; contact report on grievor's file to be amended to reflect concern about following verbal reminders; grievance allowed in part. *Re Toronto, City of, & C.U.P.E., Loc. 79*; *Leeds grievance*, Dec. 9, 1983. M. Picher — 13 pages. (53)

Work performance — failure to check equipment properly alleged; not established that resulting accident could have been prevented by grievor; grievance allowed. *Re Hekett Division of Harsco Corp. & U.S.W.A., Loc. 7577*; *Burdis grievance*, Dec. 20, 1983. Weatherill — 6 pages. (54)

Work performance: grievor lacked authority to enforce directions and act as supervisor — not accustomed to working with unskilled workers; unfair work assignment; suspension reduced to three weeks from four — period of probation lifted; grievance allowed in part. *Re Peterborough, Corporation of City of, & C.U.P.E., Loc. 504*, *Peterborough Civic Employees*; *Baptie grievance*, Nov. 29, 1983. O'Shea — 22 pages. (55)†

#### Estoppel

Past practice of replacing temporarily-absent employees not a legally enforceable right — discretion of company whether vacancy need be declared; grievance dismissed. *Re Rothmans of Pall Mall Limited & Bakery, Confectionery and Tobacco Workers, Loc. 319T*; *policy grievance*, Nov. 29, 1983. M. Picher — 26 pages. (56)\*

#### Grievance Procedure

Entitlement to union representation when discipline imposed — not violated by mailing formal notice of termination after earlier participation by representative; union preliminary argument rejected. *Re Toronto Western Hospital & O.N.A.*; *Davy grievance*, Dec. 20, 1983. Barton — 8 pages. (57)†

Timeliness — six-month delay in filing request for arbitration in discharge case — no adequate reason; grievance dismissed. *Re Hemisphere International Mfg. Co. & United Rubber Workers*; *Bhalla grievance*, Dec. 6, 1983. Egan — 7 pages. (58)

#### Holiday Pay

Christmas/New Year's days-in-lieu detract from indeterminate vacation period — vacation period deliberately not guaranteed; grievance dismissed. *Re Essex County Roman Catholic Separate School Board & S.E.U., Loc. 210*; *group grievance*, Dec. 7, 1983. Majority: Gorsky, Kavanaugh; dissent: Warner — 12 pages. (59)

Qualifying days: grievor absent from work on one of the qualifying days by reason of suspension — absence a natural consequence of grievor's misconduct; grievance dismissed. *Re Stelco Inc. Hilton Works & U.S.W.A., Loc. 1005*; *Runchey grievance*, Dec. 22, 1983. Majority: Kennedy, Jarvis; dissent: Marshall — 10 pages. (60)

#### Hours of Work

Assignment of stand-by time — employer precluded from unilaterally scheduling stand-by time between morning and afternoon portions of split shift; grievance allowed. *Re Sudbury Corporation of City of, & C.U.P.E., Loc. 1662*; *policy grievance*, Nov. 29, 1983. Devlin — 13 pages. (61)†

#### Interpretation

Onus: each party asserting its own interpretation — no reason to assign onus to one party or the other; employer not required to hire a minimum of six teachers; grievance dismissed. *Re Grey County Board of Education & Ontario Secondary School Teachers' Federation, District No. 23*; *policy grievance*, Nov. 14, 1983. Majority: Teplitsky, Storie; dissent: Cazabon — 14 pages. (62)\*

#### Job Evaluation

Educational requirements — job not requiring education requirements asserted by union; grievance dismissed. *Re Toronto Public Library Board & C.U.P.E., Loc. 1996*; *Tedman grievance*, Nov. 30, 1983. Majority: O'Shea, McCormack; dissent: Richardson — 26 pages. (63)

New classification created — union claims job should be given higher evaluation — application of job-evaluation techniques consistent with undisputed jobs — evaluation bears proper rank relationship; grievance dismissed. *Re Westinghouse Canada Inc. & U.E., Loc. 549; group grievance*, Dec. 19, 1983. Swan — 14 pages. (64)†

#### Job Posting

Qualifications for lateral transfer — successful applicant more qualified; procedure followed fair; grievance dismissed. *Re Children's Aid Society of Metropolitan Toronto & C.U.P.E., Loc. 2316; Travers grievance*, Dec. 13, 1983. Barton — 9 pages. (65)†

#### Lay-off

Bumping rights — employer using job classification rather than broader contract classifications — legitimate practice in light of contract language; grievances dismissed. *Re Home Care Program for Metro Toronto & Home Care Employees; Lake and Wasdell grievances*, Dec. 13, 1983. Baum — 13 pages. (66)

Disciplinary demotion prior to lay-off; junior employee trained for position — grievor should have been returned to previous classification since demotion was for disciplinary reasons not lack of skill or competence — grievor entitled to compensation for improper lay-off; grievance allowed. *Re Whitby Boat Works Limited & United Brotherhood of Carpenters and Joiners, Loc. 2679; Pettes grievance*, Dec. 6, 1983. Brent — 16 pages. (67)

Entitlement to welfare benefits — company not obliged to continue payment of benefits for employees indefinitely laid-off; grievance dismissed. *Re Simmons Ltd. & U.E., Loc. 513; policy grievance*, Nov. 30, 1983. Barton — 7 pages. (68)†

Improper lay-off alleged — grievor junior to other employee — later recall date appropriate; grievance dismissed. *Re Whitby Boat Works Limited & United Brotherhood of Carpenters and Joiners, Loc. 2679; Ohlew grievance*. See (67), *supra*. (69)

Interpretation — seniority and displacement rights applicable to lay-off for lack of work for determinate short duration subject to company demonstrating that such would result in an ineffective work force incapable of meeting work requirements; grievance allowed. *Re Canadian General Electric Company Limited & Draftsmen's Association of Ontario, Loc. 164; policy grievance*, Dec. 9, 1983. Gorsky, Byers, Walsh — 15 pages. (70)

New restaurant opened — employees of former coffee shop and diningroom laid off — merger of two seniority lists not applicable — grievors to be considered on merits before outside hire; one grievance allowed. *Re Holiday Inn, Yorkdale & Hotel, Restaurant and Cafeteria Employees, Loc. 75; Reid and Dickson grievances*, Dec. 5, 1983. Majority: H. Brown, Parker; partial dissent: Tate — 31 pages. (71)

Part-time employees retained while full-time employees laid off — separate seniority lists; no bridging provision; grievances dismissed. *Re B.D.C. Ltd & Teamsters Loc. 938; Swinford et al grievances*, Dec. 20, 1983. Majority: Dunn, Marshall; dissent: McRae — 7 pages. (72)

Qualifications — employer conducted interview in good faith in determining grievor not qualified; grievance dismissed. *Re Westinghouse Canada & U.E., Loc. 504; Thomassian grievance*, Dec. 7, 1983. Majority: Kruger, Coupey; dissent: Davidson — 8 pages. (73)

Reduction of hours — senior grievor capable of doing work performed by junior retained — grievor entitled to bump junior, receive retroactive full-time status and compensation; grievance allowed. *Re Whitby Boat Works Limited & United Brotherhood of Carpenters and Joiners, Loc. 2679; Brunner grievance*. See (67, 69), *supra*. (74)

Reduction of hours — unskilled labourer's position filled by junior employee — in absence of evidence that two employees not relatively equal they should be presumed equal — senior employee entitled to full-time status labourer's position and retroactive compensation; grievance allowed. *Re Whitby Boat Works Limited & United Brotherhood of Carpenters and Joiners, Loc. 2679; Calabrese grievance*. See (67, 69, 74), *supra*. (75)

Reinstatement for discharge — company operating on lay-off — work record may be considered when determining which of two relatively equal employees to retain; no violation to retain other employee in this case; grievor should have been recalled before junior employees; compensation awarded based on probable lay-off and recall dates; grievance allowed. *Re Whitby Boat Works Limited & United Brotherhood of Carpenters and Joiners, Loc. 2679; Webb grievance*. See (67, 69, 74, 75), *supra*. (76)

#### Overtime

Assignment to lower-classification employees on shift rather than equal-classification employees on other shifts — contract states "on that shift"; grievance dismissed. *Re Webster Mfg. (London) & International Molders and Allied Workers, Loc. 49; policy grievance*, Dec. 14, 1983. Gorsky — 8 pages. (77)

Distribution — employees performing work on regular relief basis entitled to equal overtime opportunities; grievance dismissed. *Re Emrick Plastics Inc. & U.A.W., Loc. 195; union policy grievance*, Dec. 15, 1983. Gorsky — 10 pages. (78)

#### Overtime Pay

Calculation — cost of living allowance not to be added to base wage rates in order to determine rate upon which overtime pay is calculated; grievance dismissed. *Re Emrick Plastics Inc. & U.A.W., Loc. 195; group grievance*, Nov. 30, 1983. Samuels — 9 pages. (79)

#### Procedure

Adjournment where matter before Inflation Restraint Board — need to avoid inconsistent verdicts; hearing adjourned *sine die*. *Re Canadian National Exhibition Association & Labourers, Loc. 506; union grievance*, Dec. 7, 1983. Majority: Teplitsky, Storie; addendum: Storie; dissent: Robbins — 11 pages. (80)

Amendment to grievance at hearing seeking to add claim of unjust discharge to claim to expunge letter of reference denied; grievance dismissed. *Re New Orchard Lodge, Extendicare Ltd. & O.N.A.; Thibodeau grievance*. See (48), *supra*. (81)\*

Scope of subpoenas *duces tecum* — limited to production of remuneration documents pertaining to grievor's part in four named productions — relevance of documents for two of the productions to be established at hearing; interim award. *Re Canadian Broadcasting Corporation & C.U.P.E.; Zaharuk grievance*, Nov. 16, 1983. P. Picher — 6 pages. (82)



## Promotion

Qualifications: employer failing to conduct interviews and requiring formal qualifications not required in previous posting — no vacancy since position had been filled by person outside bargaining unit; grievance allowed. *Re Artex Woollens Limited & Amalgamated Clothing and Textile Workers, Loc. 1153T; Natuerlal, Bijabhai and Dursot grievance*, Dec. 22, 1983. Majority: McLaren, Mallett; dissent: Picard — 10 pages. (83)

Qualifications for relief-foreman job — evidence of poor writing ability and attitude problems; not qualified; grievance dismissed. *Re E.B. Eddy Forest Products Ltd. & Canadian Paperworkers, Loc. 74; Burnell grievance*, Dec. 8, 1983. Majority: Knopf, Shields; dissent: Paxton — 32 pages. (84)

Qualifications — proper consideration of factors by company — no basis to interfere; grievance dismissed. *Re Loyalist College of Applied Arts and Technology & O.P.S.E.U.; Wood grievance*, Dec. 2, 1983. Majority: Brent, Shields; dissent: McIntyre — 11 pages. (85)

Qualifications: physical fitness — grievor qualified and evidence establishing present fitness to perform work despite problems in past with "scarfer's elbow"; grievance allowed. *Re Steel Company of Canada, Lake Erie Works & U.S.W.A., Loc. 8782; Lennartz grievance*, Nov. 29, 1983. Delisle, Storie, Stetson — 8 pages. (86)

Temporary employee selected was not an eligible candidate for the job posting — matter referred back to parties; grievance allowed. *Re Hogarth-Westmount Hospital & S.E.U., Loc. 268; Smetana grievance*, Dec. 15, 1983. Kates — 13 pages. (87)

## Recall

Qualifications — grievor lacked experience in hydraulics; grievance dismissed. *Re O & K Orenstein and Koppel Canada & I.A.M., Loc. 1740; Rorie grievance*, Dec. 1, 1983. Black — 12 pages. (88)†

Qualifications where lengthy lay-off — one grievor qualified to perform the work, one not; Callon grievance allowed; Theriault grievance dismissed. *Re Algoma Steel Corporation Limited & U.S.W.A., Loc. 5595; Callon and Theriault grievances*, Dec. 20, 1983 R.J. Roberts — 13 pages. (89)†

## Seniority

Lay-off — length of service within classification, not with company, is determining factor; grievance dismissed. *Re Burke & Wallace Limited, Mississauga & International Molders and Allied Workers, Loc. 64; Divito grievance*, Dec. 2, 1983. Brent — 5 pages. (90)

## Sick Leave

Calculation: employer may opt to pay out credits to continuing employees to a maximum of ninety days — no evidence of past practice establishing a cap of forty-five days; grievance allowed. *Re Alexandra Marine and General Hospital & O.N.A.; policy grievance*, Dec. 21, 1983. Majority: Hunter, Beaulieu; dissent: Storie — 17 pages. (91)

## Strike

"Pink letter" urging members to boycott night-school courses — "no boycott" clause in collective agreement operative; employer policy grievance allowed. *Re North York Board of Education & Ontario Secondary School Teachers' Federation, District 13; employer policy grievances*, Dec. 7, 1983. M. Picher, Riddell, Posen — 35 pages. (92)

## Uniforms

Dress code: employer directed employees to wear specific attire — flexibility allowed as to material and styling — items lack degree of uniformity or sameness to constitute a uniform; grievances dismissed. *Re Westin Hotel & Hotel, Restaurant and Cafeteria Employees, Local 75; policy grievances*, Dec. 12, 1983. Majority: Lederman, Israel; dissent: Tate — 30 pages. (93)\*

## Vacations

Entitlement determined by completion of years of continuous service: continuous-service date for determining vacation moved ahead by maternity leave — years of continuous service must be completed before vacation entitlements arise; prorating to be calculated on days of actual vacation earned — vacation entitlement readjusted; grievance allowed. *Re Sault Ste. Marie Public Utilities Commission & C.U.P.E., Loc. 3, Sault Ste. Marie Public Utilities Commission Office Workers Section; Sturgeon grievance*, Dec. 20, 1983. Black — 7 pages. (94)†

Entitlement: exact date for calculation of vacation benefits provided — no evidence of intention to give retroactive effect; grievance dismissed. *Re Abbott Laboratories Limited & R.W.D.S.U., Loc. 414; Johnston grievance*, Nov. 12, 1983. Majority: Roach, Ruddy; dissent: Barron — 15 pages. (95)

Scheduling — denial of grievor's request proper; grievance dismissed. *Re Etobicoke, Corporation of City of, & C.U.P.E., Loc. 185; Klim grievance*, Nov. 14, 1983. H. Brown, Hodges, Riordon; addendum: Hodges — 13 pages. (96)

## Vacation Pay

Vacation bonus — grievors on indefinite lay-off at time of annual vacation shutdown — no vacation entitlement at the time, so not entitled to bonus; grievance dismissed. *Re Canadian Meter (Division of Singer Company of Canada Ltd. & U.S.W.A., Loc. 4574; group grievance*, Dec. 5, 1983. Samuels — 7 pages. (97)

## Wages

Unusual working conditions — established that employees unable to earn normal piecework rate — entitled to average hourly wage; grievance allowed. *Re GTR Industrial Products Co. (Canada) & United Rubber Workers, Loc. 455; union grievance*, Dec. 19, 1983. Welling — 10 pages. (98)†

## Welfare Plans

Death benefits — amount receivable by survivor not to be made subject to a .7% deduction if the deceased died before being eligible to receive Canada Pension Plan benefits; grievance allowed. *Re York, Corporation of Borough of, & York Professional Fire Fighters Association; Kennedy grievance*, Nov. 25, 1983. Teplitsky — 10 pages. (99)

Employer policy requires employees to pay full cost of benefit premiums after 30 continuous days of absence; employee must also repay premiums paid on his behalf for first 30 days — words of collective agreement clear; grievance dismissed. *Re Victoria Hospital Corporation & London and District Service Workers, Loc. 220; Difede grievance*, Dec. 12, 1983. Adams, Sargeant, Lewis — 12 pages. (100)

Extent of employer's liability — insurer discontinuing benefits disintitling grievor to future permanent plan not a concern of employer if insurance obtained in accordance with collective agreement; employer not responsible even if insurer unreasonably discontinues; grievance dismissed.

*Re Herb Fraser and Associates & U.S.W.A., Loc. 7022; Mester grievance.* See (5), *supra*. (101)

Weekly indemnity benefits — company fulfilled its obligation to arrange for coverage and pay premiums; dispute as to entitlement not to be asserted against company, but insurer; grievance dismissed. *Re Honeywell Limited & U.A.W., Loc. 80; Tims grievance*, Dec. 16, 1983. Hinnegan, White, Bruce — 7 pages. (102)

### Work Assignment

Inequitable workload claimed — extra courses assigned late in the year for summer period; not a mere adjustment to original assignment; grievance allowed. *Re Lambton College of Applied Arts and Technology & O.P.S.E.U., Graf grievance*, Nov. 30, 1983. Majority: H. Brown, Bounsall; dissent: Shields — 19 pages. (103)

Inventory work — traditionally shared with non-bargaining unit employees — since not exclusively bargaining-unit work, employer free to assign it entirely to non-unit employees; grievance dismissed. *Re Cannon Inc. (Plastics Division) & International Molders and Allied Workers, Loc. 64; group grievance*, Dec. 15, 1983. Kates — 8 pages. (104)

Promotion out of bargaining unit and effective elimination of previous job — more responsibility in new position coupled with legitimate reorganization of department; grievance dismissed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; Angus grievance*, Nov. 30, 1983. Majority: O'Shea, Holt; dissent: Richard — 16 pages. (105)

"Pupil-teacher ratio" — based on past practice and statutory definitions, pupils and teachers (including those attached to central office) are calculated on a "full-time equivalent" basis; grievance allowed in part. *Re Bruce County Board of Education & Ontario Secondary School Teachers' Federation, District 44; branch affiliate grievance*, Nov. 25, 1983. Majority: P. Picher, Smith; partial dissent: Merritt — 26 pages. (106)

Seniority not applied in temporary assignment for vacation relief — seniority only applied to filling of permanent job vacancies; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 582; Turco grievance*, Dec. 13, 1983. Black — 8 pages. (107)†

Seniority not applying if transfer within same job classification — grievance dismissed. *Re Women's Christian Association of London & London and District Service Workers, Loc. 220; Marentette grievance*, Nov. 23, 1983. H. Brown, McDonald, Heffernan — 11 pages. (108)

Supervisory personnel performing some security duties — extent and volume of duties insufficient to bring them into bargaining unit; grievance dismissed. *Re Inco Metals Company & Canadian Guards Association, Loc. 105; policy grievance*, Dec. 28, 1983. Majority: Hinnegan, Kort; dissent: McVey — 8 pages. (109)

Training position — unreasonable to refuse to continue training when conditions both too busy and too slack; grievance allowed. *Re Heckett Division of Harsco Corp. & U.S.W.A., Loc. 7577; McKenna grievance*, Dec. 20, 1983. Weatherill — 8 pages. (110)

Transfer of duties from one bargaining unit to another — no prohibition in agreement — company's withdrawal of express proposal at last negotiations does not raise an estoppel; grievance dismissed. *Re Canteen of Canada Ltd. & R.W.D.S.U., Loc. 414; union grievance*, Dec. 1, 1983. Majority: Kates, Brisbin; dissent: Dahmer — 33 pages. (111)\*

### Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the months of November and December, 1983, and January and February, 1984.

#### Arbitrability

Settlement alleged — employer representative had apparent authority; order to comply. *Re Perfection Rug Co. Ltd. & U.B.C.J.A., Resilient Floorworkers, Loc. 2965; union grievance*, Jan. 31, 1984. Howe, Cooke, Wilson — 23 pages. (112)

Settlement alleged by union — dispute as to authority of manager to instruct employer's counsel to settle — union had no notice of any limitation; terms of settlement ordered. *Re Urban Mechanical Contracting 1979 Ltd. & United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, Loc. 46; Blassutta grievance*, Nov. 22, 1983. Furness, Bell, Rutherford — 9 pages. (113)

Settlement of grievance alleged — union given option of withdrawing grievance and refile to have settlement enforced or claiming grievance not settled and proceeding on the merits; grievance withdrawn. *Re Perfection Rug Co. Ltd. & Resilient Floorworkers, Loc. 2965; union grievance*, Dec. 12, 1983. Satterfield, Kobryn, Murray — 7 pages. (114)

Settlement — union and grievor's acceptance communicated to employer — written agreement not necessary in this case; grievance not arbitrable. *Re Ontario Hydro & International Association of Bridge, Structural and Ornamental Iron Workers; Brown grievance*, Nov. 3, 1983. Gray, Bell, Kobryn — 13 pages. (115)

#### Collection

Persistent delinquency in payment to certain funds — order bond to be posted to cover possible future failures. *Re K.A. Mace Ltd. & United Brotherhood of Carpenters and Joiners, Loc. 785; union grievance*, Nov. 21, 1983. Springate, Bell, Kobryn — 2 pages. (116)

Wages and benefits — employer not present at hearing — order to pay issued. *Re Ferracon Construction Ltd. & Labourers, Loc. 506; union grievance*, Jan. 30, 1984. Gray, Wilson, Rutherford — 4 pages. (117)

Wages, vacation pay, benefits — order to pay issued. *Re Serit Construction Ltd. & I.U.O.E.; Durand grievance*, Dec. 22, 1983. Satterfield, Stamp, Ballentine — 4 pages. (118)

#### Collective Agreement

Declaration of related or successor-company status — bound by provincial agreement; failure to hire union workers; grievance allowed. *Re Rino Zanette Ltd., Rino Zanette (1981) Ltd. & Labourers, Loc. 607; union grievance*, Jan. 27, 1984. Franks, Bell, Kobryn — 3 pages. (119)



### Discharge

Avoidance of work — disregard of safety procedures — poor attitude — progressive discipline applied; grievance dismissed. *Re Electrical Power Systems Construction Association and Ontario Hydro & Ontario Allied Construction Trades Council, Labourers, Loc. 597; Lalonde grievance*, Oct. 24, 1983. Springate, Stamp, Kobryn — 6 pages. (120)

Refusal to work, counselling and participating in an unlawful strike — grievor as steward owes duty to employer to assist in compliance with collective agreement; grievance dismissed. *Re SNC/FW Ltd. & International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Loc. 128; Grant grievance*, Oct. 21, 1983. Franks, Murray, Armstrong — 6 pages. (121)

Threat to supervisor alleged — even if made it was not relied on at time of discharge; just cause not proven; remedy left to parties. *Re Structform Group Inc. & Labourers, Loc. 506; Camacho grievance*, Nov. 21, 1983. Franks, Stamp, Ballentine — 3 pages. (122)

### Evidence

Ambiguity — neither latent nor patent ambiguity found — difference of interpretation — evidence of estoppel by conduct admissible to show that applicant was led to believe a different interpretation; interim award. *Re George Ryder Construcion (Cavilier Construction) and Employer Bargaining Agency & United Brotherhood of Carpenters and Joiners, Loc. 2486; policy grievance*, Oct. 25, 1983. C. Murray, Wilson, Ballentine — 4 pages. (123)

### Interpretation

Ambiguity not established — estoppel not applicable on proposed evidence; evidence not admitted at this time; hearing adjourned *sine die* on consent. *Re Nadrofsky Corporation & I.U.O.E., Loc. 793; union grievance*, Nov. 4, 1983. Gray, Wightman, Cooke — 8 pages. (124)

### Procedure

Section 1(4) pleaded — union not filing proper notice under sections 1(4), 63; hearing adjourned pending proper notice. *Re Tri-Con Mechanical (Sarnia) Ltd. & International Association of Bridge, Structural and Ornamental Iron Workers, Loc. 700; union grievance*, Dec. 20, 1983. C. Murray, Swenor, Grasso — 7 pages. (125)

### Sub-Contracting

Breach of provincial agreement — order to pay wages and benefits. *Re Edland Building Systems Ltd. & Sheet Metal Workers, Loc. 537; union grievance*, Nov. 2, 1983. Burkett, Murray, Ross — 3 pages. (126)

### Travel Allowance

Eligibility — location of job site the sole criterion; residence of employee is irrelevant; grievance allowed. *Re Etrusca Construction Ltd. & Formwork Council of Ontario; union grievance*, Jan. 13, 1984. Franks, Wightman, Armstrong — 2 pages. (127)

### Travel Expense

Reimbursement for cost of parking for employees — employer not required to reimburse for parking costs but to make every effort to secure adequate parking; grievance dismissed. *Re Blenkham & Sawle Ltd. & Sheet Metal Workers, Loc. 537; group grievance*, Oct. 19, 1983. Majority: Franks, Ronson; dissent: Kobryn — 4 pages. (128)

### Wages

Collection — employer failing to make proper remittances — employer failing to establish grounds for adjournment of hearing; grievance allowed. *Re A. Barei Construction Ltd. & Ontario Provincial Conference of International Union of Bricklayers and Allied Craftsmen; group grievance*, Oct. 1, 1983. Gray, Wightman, Cooke — 6 pages. (129)

Rate of pay — higher-wage schedule "J" applicable — employer not paying mid-line rate on lower schedule "D" — employer not member of association which would entitle payment at lower-wage rates; grievance allowed. *Re Alnor Earthmoving Limited and Operating Engineers Employer Bargaining Agency & I.U.O.E., Loc. 793; group grievance*, Oct. 12, 1983. Springate, Ronson, Armstrong — 10 pages. (130)

### Welfare Plans

Employer failed to pay welfare and pension benefits — payment ordered. *Re Tri-Con Mechanical (Sarnia) Ltd. & International Association of Bridge, Structural and Ornamental Iron Workers, Loc. 700; union grievance*. See (125), *supra*. (131)

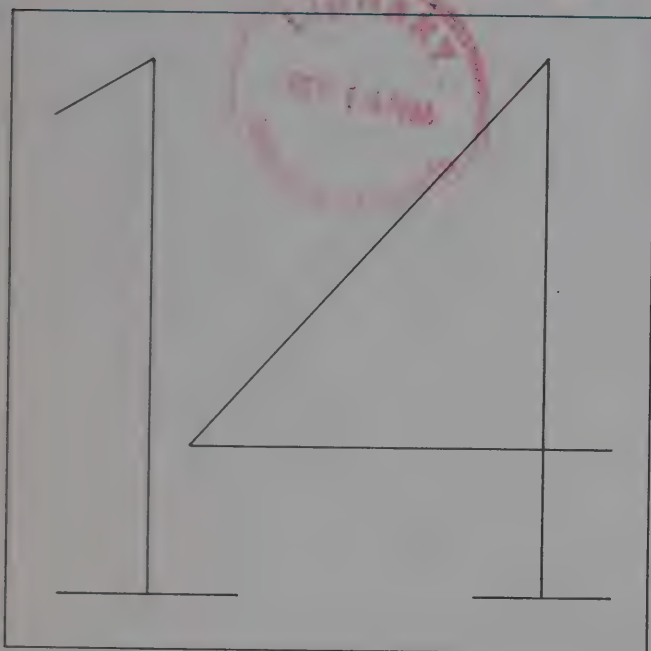
### Work Assignment

Work performed by employees of company who owned job site — they are neither employees nor subcontractors of employers; grievance dismissed. *Re Plibrico (Canada) Ltd. & Labourers, Loc. 247; union grievance*, Jan. 3, 1984. Furness, Ballentine, Ronson — 7 pages. (132)

### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

# Monthly Bulletin



Ontario Ministry of Labour



Ontario

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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1978, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of January, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Job evaluation — no criteria for review nor any job-evaluation system in collective agreement — employer only obligated to confer with union concerning what grade is to be established for a position — grievance not arbitrable. *Re CNCP Telecommunications & Canadian Association of Communications and Allied Workers; group grievance*, Jan. 12, 1984. Majority: Swinton, Milley; dissent: Beaulieu — 15 pages. (1)



Just cause for discharge — limitation implied from provision for grieving discharge — settlement of previous discharge grievance and conditional reinstatement is no bar; employer objection dismissed. *Re Birla Industries Inc. & U.A.W., Loc. 195; Corrigan grievance*, Oct. 17, 1983. Rayner — 8 pages. (2)

*Res judicata* — previous arbitrator's suggestion of demotion was more than observation; employer entitled to demote; grievance not arbitrable. *Re Nordair Ltd. & C.A.L.F.A.; Marshall grievance*, Jan. 16, 1984. M. Picher — 24 pages. (3)

Settlement of damages alleged — union and grievor failed to claim termination pay at settlement meeting although fully apprised of relevant facts; cheque accepted without reservation; grievance not arbitrable. *Re Falconbridge Nickel Mines Limited & Sudbury Mine, Mill and Smelter Workers, Loc. 598; Loughridge grievance*, Jan. 16, 1984. Majority: P. Picher, Valin; dissent: McIntyre — 15 pages. (4)

Temporary employee; student quit school to continue employment — date of commencement of probation date student hired not date of decision to stay on; probation period expired; grievance arbitrable. *Re Nacan Products Ltd. & E.C.W.U., Loc. 819; Cutt grievance*, Jan. 12, 1984. Boscariol — 7 pages. (5)†

#### Bargaining Unit

Student volunteer — no remuneration; status not changed from that of volunteer; grievance dismissed. *Re Merry-mount Children's Home & London and District Service Workers, Loc. 220; Cunningham grievance*, Jan. 24, 1984. Gorsky, Flannigan, Beaulieu — 12 pages. (6)

#### Bereavement Pay

Stepson — included in definition of "child" — no further proof of close relationship needed; grievance allowed. *Re Ottawa, Corporation of City of, & Ottawa-Carleton Employees, Loc. 503; Roy grievance*, Oct. 27, 1983. Majority: Roach, Switzman; dissent: Gladu — 20 pages (7)

#### Classification

Higher classification claimed — grievor not performing the care functions of classification claimed as set out in classification definition; grievance dismissed. *Re George Brown College of Applied Arts and Technology & O.P.S.E.U.; Madigan grievance*, Jan. 20, 1984. Majority: Brent, Shields; dissent: Switzman — 17 pages. (8)

New classification — after certification, position of Nursing Attendant merged with Nursing Assistant — grievors to be paid at higher rate; grievances allowed. *Re Versa-Care Centre of Hanover & London and District Service Workers, Loc. 220; Bender, Clough, Hill, Warren grievances*, Jan. 5, 1984. Majority: Samuels, Beaulieu; dissent: Rhineland — 10 pages. (9)

Relief foreman's pay claimed — supervisor told grievor to perform duties — held to be foreman's duties even though denied by employer; grievance allowed. *Re Nepean Hydro-Electric Commission & C.U.P.E., Loc. 983; Ricci grievance*, Jan. 17, 1984. Majority: Kates, Ferguson; dissent: Armstrong — 9 pages. (10)

Temporary transfer alleged — labourer retaining keys to truck and capable of being called on at any time to drive; to be paid at rate of driver for entire work period; grievance allowed. *Re Brantford Board of Park Management and Recreation Commission & C.U.P.E., Loc. 181; Jacob grievance*, Jan. 17, 1984. Egan — 5 pages. (11)†

#### Collective Agreement

Employer not entitled to arrange unilaterally with individual employees to pay benefits rather than percentage of salary in lieu of benefits as required by collective agreement — power to award interest part of power to award compensation for loss incurred by employer's breach; grievance allowed. *Re Heritage Nursing Home Limited & O.N.A.; group grievance*, Jan. 9, 1984. Majority: MacDowell, Mayne; dissent: Churchmuch — 70 pages. (12)

#### Contracting Out

Contracting out of work performed by part-time union members — hours adversely affected; grievance allowed without damages. *Re Country Place Nursing Home & C.U.P.E.; policy grievance*, Nov. 7, 1983. Rayner — 10 pages. (13)†

#### Damages

Costs of time and travel for hearing — not awarded for arbitration hearing — allowed in part for resumed Academic Personnel Committee hearing necessitated by breach. *Re Laurentian University & Laurentian University Faculty Association; Bastin-Miller grievance*, Dec. 12, 1983. Mullen, Craven, Rose — 7 pages. (14)

Employer improperly imposed work-sharing program on part-time employees — remedy must take into account individual circumstances — compensation not to include payment of overtime unless hours worked are in addition to "normal" number of hours worked — overlap principle applies — compensation not to include meal periods; supplementary award. *Re Toronto Star Newspaper Limited & Southern Ontario Newspaper Guild; group grievance*, Jan. 5, 1984. P. Picher, Middleton, Tate — 14 pages. (15)

Interest — arbitration board having authority to award interest. *Re Heritage Nursing Home Ltd. & O.N.A.; group grievance*. See (12), *supra*. 16)

Mitigation — previous part-time real estate job continued for period before reinstatement — considered as in mitigation where no other effort made to find work — inappropriate to award interest. *Re Consolidated-Bathurst Packaging Ltd., Whitby, & International Woodworkers, Loc. 2-242; Hunt grievance*, Jan. 7, 1984. Majority: Dunn, Rogers; dissent: Herlich; addendum: Dunn — 11 pages. (17)

Several issues clarified — which grievors entitled to compensation — at what rate — no overtime pay without historical evidence — vacation pay and interest awarded — insufficient evidence of lack of mitigation. *Re Dominion Bridge, Mt. Dennis Plant & U.S.W.A., Loc. 3390; Sears et al group grievance*, Jan. 9, 1984. Schiff — 5 pages. (18)

#### Demotion

Incompetence, poor workmanship alleged — evidence inaccurate — reinstatement to former position ordered; grievance allowed. *Re Franklin Manufacturing Co. Ltd. & I.A.M., Loc. 1246; O'Mahony grievance*, Dec. 14, 1983. McKechnie, Lewis, Merritt — 8 pages. (19)

Return to former job where allegedly unable to perform new job — irrelevant that new job awarded by arbitrator not employer; union preliminary objection dismissed. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Loc. 673; Masterton grievance*, Jan. 4, 1984. Gorsky — 6 pages. (20)

# Discharge

Absence from work — leaving sanitarium against medical advice, but not reporting for work; properly absent; grievance allowed. *Re Bundy of Canada Ltd. & U.A.W., Loc. 1352; Berthin grievance*, Jan. 9, 1984. Weatherill — 9 pages. (21)

Absence without leave — two weeks unaccounted for, *bona fides* of grievor doubted; grievance dismissed. *Re Windsor Western Hospital Centre & O.N.A.; Lemay grievance*, Dec. 8, 1983. Majority: Palmer, Bartlet; dissent: Mayne — 35 pages. (22)

Absence without notice — duty of employee to notify company of estimated length of absence not discharged; grievance dismissed. *Re Outboard Marine Corp. of Canada & U.S.W.A., Loc. 5009; Hum grievance*, Jan. 20, 1984. Brent — 7 pages. (23)

Absenteeism — grievor absent from work as a result of compensable accident — no evidence indicating grievor incapable of regular attendance in the future — reinstatement on condition of proof by medical evidence of fitness to work; grievance allowed. *Re Great Atlantic & Pacific Company of Canada Limited & R.W.D.S.U., Loc. 414; Ciddio grievance*, Jan. 24, 1984. Majority: McLaren, Baldwin; dissent: Dahmer — 10 pages. (24)

Absenteeism — grievor failing to tell timekeeper reasons for absence and absence without excuse; suspension substituted. *Re Canada Post Corporation & C.U.P.W.; Themeliopoulos grievance*, Jan. 19, 1984. P. Picher — 19 pages. (25)

Absenteeism — innocent absenteeism over span of one month insufficient to justify discharge — reinstatement without back pay ordered. *Re KSR Industrial Corporation of Canada & U.A.W., Loc. 347; Hooper grievance*, Dec. 13, 1983. Rayner — 6 pages. (26)

Absenteeism — irrelevant whether innocent or culpable — no evidence of future improvement; grievance dismissed. *Re Ottawa General Hospital & C.U.P.E., Loc. 1657; Schiffo grievance*, Jan. 17, 1984. Majority: Kates, Beaudry; dissent: Ballantyne — 17 pages. (27)\*

Absenteeism — mixture of culpable and non-culpable incidents; conditional reinstatement with no compensation. *Re Goodyear Canada Inc. & United Rubber Workers, Loc. 232; Baldwin grievance*, Dec. 6, 1983. McKechnie — 13 pages. (28)†

Absenteeism — no chronic or lasting disability — no basis to infer that past attendance problems will continue; grievance allowed. *Re Sunnybrook Medical Centre & Sunnybrook Hospital Employees, Loc. 777; Lalji grievance*, Jan. 20, 1984. M. Picher — 16 pages. (29)†

Absenteeism, lateness — under company's Employee Assistance Program grievor clearly warned; grievance dismissed. *Re PCL Packaging Limited & E.C.W.U., Loc. 593; Bye grievance*, Jan. 23, 1984. Beck — 9 pages. (30)

Alcoholism — reasonable likelihood that grievor would benefit from treatment program; grievor to be offered conditional reinstatement, placed on leave of absence without pay effective date treatment begins — if program successfully completed, seniority to be calculated from date of reinstatement — grievor to be placed on probation for one year. *Re Toronto Board of Education & C.U.P.E., Loc. 1325; individual grievance*, Jan. 17, 1984. Knopf — 12 pages. (31)†

Culminating incident: absenteeism — grievor failed to notify company of absence in advance of shift — company did not seek clarification of doctor's note — misconduct less serious than company believed; five-day suspension with compensation, no loss of seniority substituted. *Re Steel Company of Canada Inc., Hilton Works, & U.S.W.A., Loc. 1005; Wighton grievance*, Dec. 30, 1983. Majority: Burkett, Marshall; dissent: Baker — 22 pages. (32)

Culminating incident — chronic absenteeism and lateness; discipline greater than co-worker because work record worse; grievance dismissed. *Re Midas Canada & U.S.W.A.; Sourbutts grievance*, Dec. 27, 1983. R.J. Roberts — 10 pages. (33)†

Culminating incident — fifth avoidable accident; grievance dismissed. *Re United Parcel Services Canada & Teamsters Loc. 938; Reid grievance*, Jan. 3, 1984. Majority: Dunn, Brady; dissent: McRae — 11 pages. (34)

Insubordination — continued refusal to follow directions; grievance dismissed. *Re Dayton-Walther Canada Ltd. & U.S.W.A., Loc. 4656; Proctor grievance*, Jan. 4, 1984. R.J. Roberts — 12 pages. (35)†

Insubordination and assault on supervisor established — requirement to inform steward satisfied by notification shortly after termination — mitigating factors outweighed by gravity of offence; grievance dismissed. *Re Byron Jackson Division Borg-Warner (Canada) Ltd. & I.A.M., Loc. 235; Panic grievance*, Jan. 4, 1984. O'Shea — 25 pages. (36)

Failure to perform work assignment alleged — all work performed in good faith and to best of grievor's ability; grievance allowed. *Re Reid Dominion Packaging Ltd. & Teamsters Loc. 879; Hamilton grievance*, Jan. 2, 1984. Hunter — 24 pages. (37)†

Intoxication — consumption of alcohol at break not specifically prohibited; no final warning given prior to discharge — good record considered — degree of impairment considered; one-month suspension without pay substituted. *Re Chez Moi Tavern & International Beverage Dispensers' and Bartenders' Union, Loc. 280; McGrotty grievance*, Jan. 6, 1984. Black — 9 pages. (38)†

Permanent disability — while situation temporary, agreement requires employer to create new light-duty classification — no such duty when disability becomes permanent; grievance dismissed. *Re Ottawa, Corporation of City of, & C.U.P.E., Loc. 503; Casale grievance*, Nov. 21, 1983. Majority: Lunney, Vice; dissent: Beaulieu — 28 pages. (39)

Quit alleged — up to company to decide if grievor is to be permitted to withdraw resignation; grievance dismissed. *Re Canadian Standards Association & C.U.P.E., Loc. 967; Ricchio grievance*, Jan. 11, 1984. Verity — 11 pages. (40)†

Quit alleged — objective evidence of quit inadequate; grievance allowed. *Re Toronto Star Newspaper Limited & Southern Ontario Newspaper Guild; Drobot grievance*, Dec. 29, 1983. P. Picher — 24 pages. (41)

Termination for business conditions beyond company control — seniority not relevant; company considered versatility, efficiency, seniority, early retirement; grievance denied. *Re Herold and Garbe & Graphic Arts International Union; Adair grievance*, Jan. 2, 1984. Kruger — 17 pages. (42)

Theft of company property alleged — not proved on civil standard of proof; grievor reinstated with full compensation. *Re Oshawa Group Limited & Teamsters Loc. 419; Pace grievance*, Jan. 2, 1984. Majority: Hunter, Petryshen; dissent: Houck — 22 pages. (43)



Theft of company property from landfill site — company rule against salvaging not enforced even-handedly — suspension substituted. *Re Browning-Ferris Industries Limited & Teamsters Loc. 880; Wilder grievance*, Jan. 19, 1984. Barton — 9 pages. (44)

Theft of substantial quantity of new motors from company — grievor not candid at hearing; grievance dismissed. *Re Inglis Limited & U.S.W.A., Loc. 2900; MacIsaac grievance*, Jan. 9, 1984. O'Shea — 16 pages. (45)

Work performance — previous psychological counselling — disciplinary approach not appropriate; conditional reinstatement with compensation ordered. *Re Firestone Canada Inc. & United Rubber Workers, Loc. 113; Maturi grievance*, Jan. 4, 1984. Lerner — 13 pages. (46)†

#### Discipline

Failure to follow proper loading procedures; grievance dismissed. *Re Trans Western Express Limited & Teamsters Loc. 938; King grievance*, Dec. 23, 1983. Majority: Rayner, Cowan; dissent: McRae — 9 pages. (47)

Fighting — grievor not the instigator but nevertheless did not refrain; one-day suspension substituted for three. *Re Toronto General Hospital & C.U.P.E., Loc. 2001; Robinson grievance*, Jan. 12, 1984. Samuels, Coupey, Robbins — 5 pages. (48)

Fine of one-half hour's pay for failure to properly clock in — both company and union agreed to procedure; grievance dismissed. *Re Lake Erie Works, Stelco Inc. & U.S.W.A., Loc. 8782; Minchillo grievance*, Oct. 18, 1983. Majority: Palmer, Storie; dissent: O'Neill — 6 pages. (49)

Horseplay — grievor's actions slowing down entire washing process; grievance dismissed. *Re Mississauga, Corporation of City of, & A.T.U., Loc. 1572; Fava grievance*, Jan. 5, 1984. Samuels — 6 pages. (50)†

Horseplay: wrestling near heavy machinery — first discipline; prior general notice regarding behaviour considered; grievance dismissed. *Re Royal Canadian Mint & Public Service Alliance of Canada; Brathwaite grievance*, undated. Majority: Roine, Kelley; dissent: Kearney — 26 pages. (51)

Insubordination — grievor refused to follow new practice that would cause him financial loss — not so clearly a violation of collective agreement as to be an exception to "work now, grieve later"; three-day suspension reduced to written reprimand. *Re I.C.L. International Carriers Ltd., Special Commodities Div. (Steel & Bulk) & Teamsters Loc. 880; Pranger grievance*, Jan. 18, 1984. Barton; dissents: Bondy, Laub — 11 pages. (52)

Insubordination — inherent in power to dismiss teacher is power to take lesser disciplinary steps including power to suspend without pay — inherent in right and responsibility to manage — just cause and reasonableness of penalty established; grievance dismissed. *Re Hamilton Board of Education & Ontario Public School Teachers' Federation; Garrity grievance*, Jan. 17, 1984. Majority: Kennedy, Morin; dissent: Lamb — 17 pages. (53)\*

Insubordination — refusal to perform some job duties as ordered — suspension within range of reasonable disciplinary responses; grievances dismissed. *Re Cabot Carbon of Canada Limited & E.C.W.U., Loc. 914; Foley and MacKinnon grievances*, Dec. 12, 1983. Majority: H. Brown, Anissimoff; dissent: Rogers — 34 pages. (54)

Insubordination — verbal assault alleged — supervisor's evidence preferred; one-day suspension upheld. *Re Canadian Fram Ltd. & U.A.W., Loc. 127; Ladd grievance*, Oct. 15, 1983. Rayner — 10 pages. (55)

Insubordination: refusal to perform duties based on health risk — belief not reasonable; refusal not promptly reported; grievance dismissed. *Re Toronto Western Hospital & C.U.P.E., Loc. 1744; Pacheco grievance*, Jan. 3, 1984. Wilson — 12 pages. (56)†

Insubordination: refusal to perform job assigned because such assignment would be a breach of collective agreement — "work now, grieve later" principle upheld; grievance dismissed. *Re Brock Containers & International Woodworkers, Loc. 2-112; Farrugia grievance*, Jan. 10, 1984. M. Picher — 21 pages. (57)†

Intoxication — anti-union animus argued — evidence showing intoxication and no anti-union animus; grievance dismissed. *Re Windsor Arms Hotel — Noodles Restaurant & Food and Service Workers; Crelier grievance*, Jan. 5, 1984. Baum — 10 pages. (58)†

Poor work performance, absence from work, abusive language alleged — incidents established — not harassment by employer; four grievances dismissed. *Re Canada Post Corporation & C.U.P.W.; Mandel grievance*, Jan. 11, 1984. Arthurs — 32 pages. (59)

Procedure — presence of union representative at Discipline Committee meeting a mandatory requirement; grievance allowed; suspension removed from grievor's record with full compensation awarded. *Re PPG Industries Canada Ltd. & E.C.W.U., Loc. 690; Lyden grievance*, Jan. 11, 1984. Davis — 7 pages. (60)†

Procedure: timeliness for giving grievor notice of discipline — considered: what constitutes a "report", when maximum time period begins to run, whether weekends count — notice timely; union objection dismissed. *Re Canada Post Corporation & C.U.P.W.; Mandel grievance*. See (59), *supra*. (61)

Progressive discipline procedure not followed — steward not present at hearing of one incident — step "skipped"; written warning substituted for suspension. *Re MacMillan-Bathurst Inc. & International Woodworkers, Loc. 2-76; Pauta grievance*, Jan. 12, 1984. O'Shea — 11 pages. (62)†

Threatening foreman alleged — supervisor not afraid that threats would be carried through, company did not satisfy burden of proof; grievance allowed — three and one-half day suspension to be removed from record, grievor to be fully compensated. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Loc. 43; Phillips grievance*, Jan. 20, 1984. Foisy — 19 pages. (63)†

Unauthorized coffee break — grievor had received verbal warning previously; written warning appropriate; grievance dismissed. *Re Bell Canada & Communications Workers, Loc. 26; Willsher grievance*, Jan. 24, 1984. Majority: Kennedy, Churchill-Smith; dissent: Switzman — 10 pages. (64)

#### Estoppel

Bumping rights — estoppel alleged to permit "bumping down" by employees not classified by volume — not established; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; policy grievance*, Jan. 23, 1984. Weatherill — 12 pages. (65)\*

Calculation of overtime — employer estopped from changing interpretation used for seven years; withdrew attempt to change it at last negotiations; grievance allowed. *Re Lake Ontario Cement Ltd. & United Cement, Lime and Gypsum Workers, Loc. 387; union policy grievance*, Jan. 25, 1984. M. Picher, Lewis, Morley; addendum: Morley — 16 pages. (66)\*

Calculation of seniority — past practice to calculate seniority from date of entry into local bargaining unit — company estopped from relying on clear language of collective agreement; grievance allowed. *Re Ford Motor Company of Canada Limited & U.A.W., Loc. 240; policy grievance*, Dec. 30, 1983. Kennedy — 20 pages. (67)\*

Change in incentive rates following introduction of new style — union estopped from insisting that revision of rates be based upon percentage change in time taken to do the work resulting from new style; grievance denied. *Re Greb Industries & Amalgamated Clothing and Textile Workers; policy grievance*, Nov. 4, 1983. Majority: Rayner, Hassell; dissent: Bruder — 10 pages. (68)

Past practice to shut down tire-production plant during week following Christmas: holiday schedule affected by change from five to six and two-thirds day work week — company conduct induced union belief that holidays would not be affected; company estopped from rescheduling statutory holidays to allow for production during shutdown week; estoppel operating until renegotiation of collective agreement; grievance allowed. *Re Goodyear Canada Inc. & United Rubber Workers, Loc. 232; policy grievance*, Jan. 19, 1984. Black — 20 pages. (69)†

Representations during negotiations — representation during negotiations that any rehiring be based on seniority; estoppel operating; grievances allowed. *Re Gabriel of Canada Ltd. & I.A.M., Loc. 1295; policy grievances*, Dec. 28, 1983. Davis — 13 pages. (70)\*†

## Evidence

Allegation of unequal treatment of grievor — union not precluded from calling evidence of an incident involving disciplinary action of fifteen employees occurring three weeks subsequently to incident in question; interim award. *Re Rio Algom Limited & U.S.W.A.; Stacknik grievance*, Dec. 30, 1983. P. Picher — 3 pages. (71)

## Grievance Procedure

Policy grievance not proper form and not allowed by collective agreement where interpretation would require consideration of four or five distinct fact situations pertaining to individual complaints — grievance not arbitrable; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited & U.A.W., Loc. 112; policy grievance*, Jan. 5, 1984. H. Brown — 12 pages. (72)

Timeliness — grievance a continuing one; grievance arbitrable. *Re Rockwell International of Canada Ltd. & U.A.W., Loc. 127; policy grievance*, Oct. 12, 1983. Palmer — 4 pages. (73)

Timeliness — mandatory time limit at step one not complied with — no reasonable grounds for extension; grievance not arbitrable. *Re Royal Canadian Legion Ortona Branch #113 & Hotel Employees, Restaurant Employees, Loc. 75; Grace grievance*, Dec. 28, 1983. Davis — 6 pages. (74)†

Timeliness — no reasonable grounds for delay in filing grievance; time limits mandatory; grievance dismissed. *Re Hanmer Bus Lines Inc. & C.U.P.E., Loc. 895; Guenette grievance*, Dec. 1, 1983. Majority: Duchesneau-McLachlan, Sheridan; dissent: Fortin — 14 pages. (75)

Timeliness — time limits mandatory; extension under *Labour Relations Act* specifically prohibited in agreement; grievance not arbitrable. *Re National Steel Car Ltd. & U.S.W.A., Loc. 7135; Kislenko grievance*, Dec. 2, 1983. Palmer — 5 pages. (76)†

## Health and Safety

Pregnant worker — grievor physically fit to perform functions of job as labourer in bakery; s.35 of *Employment Standards Act* does not apply — grievor to be reimbursed for lost wages; grievance allowed. *Re G.B. Wonder Bakeries & Retail, Wholesale, Bakery and Confectionery Workers, Loc. 461; Cornell grievance*, Dec. 15, 1983. O'Shea — 11 pages. (77)\*

## Holiday Pay

Entitlement — temporary lay-off not disentitling employees to holiday pay where contractual language personalizes qualifying days to be worked; grievance allowed. *Re Nordfibre Company & Canadian Paperworkers, Loc. 870; union grievance*, Oct. 31, 1983. Majority: Palmer, Weisbach; dissent: Braund — 7 pages. (78)

Lay-off: statutory holidays occurring while grievor on lay-off — no general entitlement; grievance dismissed. *Re United Cooperatives of Ontario & Brewery Workers, Loc. 278; Kimball grievance*, Dec. 9, 1983. Weatherill — 6 pages. (79)\*

Qualifying days — laid-off employee returning to work on day following holiday — lay-off on day preceeding holiday not considered sufficient to meet requirement for qualifying day; grievance dismissed. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Loc. 112; Woronecki grievance*, Jan. 5, 1984. Baum — 9 pages. (80)†

## Hours of Work

Notice of shift change not given — grievors to be paid premium rate until end of notice period; estoppel not established; grievances allowed. *Re Ontario Hydro & C.U.P.E., Loc. 1000; Grahame and Burger grievances*, Jan. 23, 1984. Majority: Davis, McCullough; dissent: Abbott — 9 pages. (81)

Unilateral change in hours of work per week for all employees — reduction of one work day per week owing to lack of work — precluded by language of collective agreement; employees working on day generally scheduled off because of regular short week entitled to premium pay; grievances allowed. *Re Heckett Division of Harsco Corporation & U.S.W.A., Loc. 7577; policy grievance and Thacker, Green grievances*, Oct. 13, 1983. Palmer — 8 pages. (82)

## Illness

Fitness to return to work — company physician not satisfied of grievor's fitness — no obligation for company physician to contact grievor's physician before declaring unfit; grievance dismissed. *Re Ottawa Civic Hospital & C.U.P.E., Loc. 576; Barclay grievance*, Jan. 18, 1984. Majority: Foisy, Cyr; did not concur: Head — 12 pages. (83)

Fitness to return to work following recuperation from work-related injury — company failing to provide objective evidence that grievor unable to resume work; grievance allowed. *Re Lamco Die Cast Limited & U.S.W.A., Loc. 8097; Anderson grievance*, Jan. 6, 1984. Majority: Devlin, Hynd; dissent: Yeo — 22 pages. (84)

Fitness to return to work — grievor suffered broken leg in non-work related accident — medical evidence establishes grievor's ability to perform job — reinstatement with full compensation from date of grievance; grievance allowed. *Re Algoma Contractors Limited & U.S.W.A., Loc. 4694; Dickenson grievance*, Jan. 6, 1984. Davis — 11 pages. (85)†



**Interpretation**

French version of letter of understanding creating rights for Francophone teachers not available to Anglophone teachers in respect of leave of absence for personal reasons — conflict between two interpretations not consistent with s.4(2) *School Boards and Teachers' Collective Negotiations Act*; English version of letter of understanding to be used as guide to interpret French version and intentions of parties; clarification of personal reasons for absence prior to or after holidays required; grievance dismissed. *Re Le Conseil des Écoles Séparées Catholiques Romaines du District de Sudbury et L'Association des Enseignants Franco-Ontariens Unité Sudbury Elementaire*; policy grievance, Dec. 22, 1983. M. Picher — 18 pages. (86) (English translation not available)

**Job Evaluation**

Job content change alleged — not established; use of tow-motors not an addition to machine builder's job but temporary transfer to a lower-rated job according to established practice of parties and acquiesced in by union; grievance denied. *Re Robertson Building Systems Ltd. & U.S.W.A., Loc. 4166*; policy grievance, Jan. 26, 1984. Davis — 7 pages. (87)†

**Job Posting**

Filling of position — position filled beyond period provided in collective agreement; grievance dismissed. *Re Windsor, Corporation of City of, & C.U.P.E., Loc. 543*; policy grievance, Jan. 9, 1984. Brandt — 15 pages. (88)†

Qualifications — grievor denied interview due to alleged lack of qualifications — grievor to be granted interview to determine whether equivalent qualifications possessed; grievance allowed. *Re Sunbeam Home & London and District Service Workers, Loc. 220*; *Simac grievance*, Nov. 2, 1983. Majority: Rayner, Lewis; dissent: Carrier — 20 pages. (89)\*

Specificity — posting not to be related to particular assignment within classification; grievance dismissed. *Re Laurentian Hospital & C.U.P.E., Loc. 161*; policy grievance, Jan. 12, 1984. Egan — 8 pages. (90)†

Temporary jobs caused by peakload conditions not required to be posted according to terms of collective agreement — job performed by employee who resigned required to be posted — not temporary; grievance allowed in part. *Re Durham, Regional Municipality of, & C.U.P.E., Loc. 1764*; policy grievance, Jan. 27, 1984. Emrich — 17 pages. (91)†

**Job Vacancy**

Automatic progression from lower to higher-rated job does not combine the jobs for purpose of determining vacancy — company retains right to declare and post vacancy in higher-rated position; grievance dismissed. *Re Engelhard Industries of Canada Ltd. & E.C.W.U., Loc. 45*; policy grievance, Jan. 17, 1984. Weatherill — 8 pages. (92)

Existence of vacancy — elimination of group-leader job following retirement of incumbent — company assessing necessity of maintaining the position; work created by "vacancy" not totally performed by bargaining-unit employees; grievance dismissed. *Re Stelco, Hilton Works, & U.S.W.A., Loc. 1005*; *Love grievance*, Jan. 13, 1984. Burkett, Marshall, Murray — 12 pages. (93)

**Lay-Off**

Amalgamation of jobs alleged: had always been an overlap in job functions — grievor in lower classification not qualified to bump higher-rated junior employee; grievance dismissed. *Re Ferranti-Packard Transformers Ltd. & U.S.W.A., Loc. 5788*; *Lyons grievance*, Nov. 22, 1983. Rayner — 6 pages. (94)

Bumping rights — part-time employee to be laid off first — grievor's qualifications established; grievance allowed. *Re Norfolk General Hospital & O.P.S.E.U., Mohamed grievance*, Jan. 23, 1984. Weatherill, Douglas, Bass — 9 pages. (95)

Bumping rights — return of non-bargaining unit employee to unit as result of general lay-off and shortage of work — company entitled to displace only most junior employee in plant; grievance allowed. *Re Kralinator Filters & U.S.W.A., Loc. 4605*; policy grievance, Dec. 23, 1983. Rayner — 8 pages. (96)

Bumping rights — qualifications established — duty to name employee intended to be bumped at time of lay-off; grievance allowed in part. *Re Federal Pioneer Ltd. & U.E., Loc. 564*; *Fyffe grievance*, Jan. 12, 1984. Majority: Dunn, Hutchens; addendum: Hutchens; dissent: Lomas — 7 pages. (97)

Hiring of temporary staff while grievors on lay-off — grievors capable of performing work; grievance allowed. *Re Trenton Public Utilities Commission & I.B.E.W., Loc. 636*; union grievance, Jan. 18, 1984. Majority: Weatherill; dissents in part: Bloom, Millman — 14 pages. (98)

Notice — company failed to give proper five-day notice of lay-off when emergency repairs and complications arose which necessitated plant shutdown; grievance allowed. *Re Lundy Steel & U.S.W.A., Loc. 4140*; group grievance, Dec. 9, 1983. Majority: Rayner, Urbanovics; dissent: Yeo — 11 pages. (99)

Notice requirement — had been given earlier — held to have been cancelled, not merely postponed; grievance allowed. *Re Nitrochem Inc. & E.C.W.U., Loc. 33*; *Murdock and Folsy grievances*, Nov. 14, 1983. Willes, McGee, Hoffman — 7 pages. (100)

Qualifications — grievor did not possess skills or experience to perform job sought; ten-day training period would not increase competency to necessary level; grievance dismissed. *Re Westinghouse Canada Inc. & U.E., Loc. 504*; *Akrong grievance*, Jan. 16, 1984. Gorsky — 11 pages. (101)†

Qualifications — grievor had limited exposure to job sought — no formal training and difficulty with English language; grievance dismissed. *Re Stelco Inc. & U.S.W.A., Loc. 1005*; *Havaj grievance*, Oct. 24, 1983. Majority: Rayner, Morley; dissent: Marshall — 7 pages. (102)

Qualifications — grievor not qualified to perform all aspects of position sought; grievance dismissed. *Re Beachvilime Ltd. & E.C.W.U., Loc. 32*; *Woodall grievance*, Nov. 22, 1983. Rayner — 9 pages. (103)

Qualifications — senior grievor did not have knowledge or ability to perform job sought; could not have been trained without impeding work flow; grievance dismissed. *Re Rheem Canada Incorporated & U.S.W.A., Loc. 6868*; *Lewis grievance*, Jan. 12, 1984. Baum — 8 pages. (104)†

Temporary lay-offs scheduled instead of indefinite ones with more stringent seniority provisions — employer's purpose to be looked at objectively; grievance allowed. *Re Ford Motor Company of Canada Ltd. & U.A.W., Loc. 707*; union policy grievance, Oct. 24, 1983. Palmer — 22 pages. (105)

### Maternity Leave

Entitlement to fringe benefits — past practice to include pregnancy leave under leave for illness and pay benefits; no clear evidence to establish interpretation changed after negotiations; grievance allowed. *Re Sunbeam Corporation (Canada) Limited & U.E., Loc. 566; Logan grievance*, Jan. 19, 1984. Beck — 13 pages. (106)†

### Overtime

Distribution — “as equitably as possible” is ambiguous — considered past practice that those in classification have priority over alternate-rated employees; grievance allowed in part. *Re Metropolitan Toronto, Municipality of, & Metropolitan Toronto Civic Employees, Loc. 43; Poole grievance*, Dec. 7, 1983. Majority: Teplitsky, Tate; dissent: Slater — 11 pages. (107)\*

### Overtime Pay

Employer's practice to pay for time spent at disciplinary hearings — overtime pay implicitly authorized — shift schedule prepared after employer notified of date of hearing — overtime rate to be paid; grievance allowed. *Re Ontario, Province of, (Her Majesty the Queen in Right of) & Ontario Provincial Police Association; Huber grievance*, Jan. 24, 1984. Majority: Carter, Scott; dissent: Kort — 9 pages. (108)

Calculation: cost of living allowance paid on straight time basis — “inclusion” of allowance in computing overtime pay means it should be calculated on same basis as overtime; grievance allowed. *Re National Auto Radiator Mfg. Co. Ltd. & U.A.W., Loc. 195; Englert grievance*, Dec. 12, 1983. Weatherill — 11 pages. (109)

Qualifying hours — sick leave of one day not to be calculated in “working scheduled weekly hours”; grievance dismissed. *Re Boots Drug Stores & E.C.W.U., Loc. 8; Randell grievance*, Jan. 12, 1984. Egan — 5 pages. (110)†

### Premium Pay

Two or more call-ins — Sunday premium applicable; calculation based on number of hours worked; grievance dismissed. *Re Sudbury, Regional Municipality of, & C.U.P.E., Loc. 6; Page grievance*, Jan. 3, 1984. Majority: Samuels, Noble; dissent: McVey — 6 pages. (111)

### Promotion

Entitlement — grievor as qualified employee next in seniority to employee who had been awarded the job, but who had refused it, entitled to promotion; grievance allowed. *Re Boots Drug Stores (Canada) Ltd. & E.C.W.U., Loc. 8; Thompson grievance*, Jan. 25, 1984. Betcherman — 5 pages. (112)†

Qualifications — employee to be given fair and reasonable test of fitness; grievor interviewed on irrelevant matters; no fair and straight forward test; employer to reconsider grievor's application in relation to candidates recommended for position; if promoted, grievor to be compensated from date he should have been promoted; grievance allowed. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43, C.U.P.E.; O'Hanlon grievance*, Jan. 26, 1984. Majority: Brent; partial dissents: Milks, Tate — 79 pages. (113)

Qualifications — lateness and absences relevant; grievor less productive; grievance dismissed. *Re Bell Canada & Communications Workers; McColl grievance*, Jan. 16, 1984. Majority: Burkett, Bertuzzi; dissent: Switzman — 20 pages. (114)

Qualifications — company may consider driving record and overall ability of applicants for driver's job; successful applicant had clean record; grievance dismissed. *Re William Neilson Limited & U.F.C.W.U., Loc. P-529; Powell grievance*, Jan. 12, 1984. Samuels — 5 pages. (115)†

Qualifications — formal education requirements not met; equivalence not mentioned in job manual; grievance dismissed. *Re Sudbury Hydro-Electric Commission & C.U.P.E., Loc. 138; McKessock grievance*, Dec. 13, 1983. McKechnie — 11 pages. (116)†

Qualifications — negative conclusions drawn from exercise of union duties based on personality — proper consideration; grievance dismissed. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43, C.U.P.E.; Pepin grievance*. See (113), *supra*. (117)

Training — grievor entitled to selection for training only in circumstances where another mechanical repairman required or where replacement needed owing to absence — company erred in not assigning grievor on two occasions when mechanical repairman absent; grievance allowed in part. *Re Robertson Building Systems Ltd. & U.S.W.A., Loc. 4166; Tabone grievance*, Jan. 26, 1984. Davis — 7 pages. (118)†

### Reappointment

Failure to rehire on sessional appointment — due consideration must be given only to rehire for second year — discrimination for union activity not proven; grievance dismissed. *Re Ontario College of Art & O.P.S.E.U., Loc. 576 (Unit #2); Henry grievance*, Jan. 13, 1984. Majority: Adams, Pigott; dissent: Traves — 14 pages. (119)

### Recall

Loss of seniority due to prolonged lay-off — no entitlement to recall following loss of seniority standing; grievance dismissed. *Re Goldcrest Furniture Ltd. & Canadian Union of Industrial Employees; group grievance*, Jan. 19, 1984. Devlin — 11 pages. (120)\*†

Qualifications — grievor having sufficient capability to perform unskilled job; grievance allowed. *Re Nacan Products Ltd. & E.C.W.U., Loc. 819; Dimou grievance*, Jan. 3, 1984. Wilson — 5 pages. (121)†

Qualifications — union did not advance evidence to establish skills, efficiency, physical ability of senior grievor — past practice of company to recall by seniority does not amount to estoppel; grievance dismissed. *Re Midas Canada Inc. & U.S.W.A.; Lake grievance*, Dec. 27, 1983. R.J. Roberts — 8 pages. (122)†

Settlement of earlier grievance — grievor on lay-off credited with day's wages when supervisor performed work — in light of fact more senior employees on lay-off at the time, not held to be a deemed recall so as to restart lay-off clock; termination grievance dismissed. *Re Direct Transportation System Ltd. & Teamsters Loc. 880; Agla grievance*, Jan. 5, 1984. Majority: Kates, Linder; dissent: Laub — 16 pages. (123)

### Seniority

Calculation — collective agreement not retroactive — existing practice of calculation from date of hire for both full-time and part-time employees preserved — progression for part-timers on wage scale on basis of credits imputed to them up to effective date — no violation shown respecting payment of OHIP premium; grievances #1 and #2 allowed; grievance #3 dismissed. *Re Meadow Park Nursing Home & S.E.U., Loc. 210; policy grievances*, Jan. 26, 1984. Hinnegan — 8 pages. (124)†



Calculation — seniority determined by length of service with company not time in bargaining unit — past practice contrary to language of collective agreement — company estopped from asserting collective agreement; grievance allowed. *Re Ford Motor Company of Canada Limited & U.A.W., Loc. 240; policy grievance*, Dec. 30, 1983. See (67), *supra*. (125)\*

#### Vacations

Calculation of entitlement; time spent on plan constitutes service — no deductions to be made; grievance allowed. *Re Ontario, Province of, (Her Majesty the Queen in Right of) & Ontario Provincial Police Association; McCourt grievance*. See (108), *supra*. (126)

Entitlement: grievor recently transferred from part-time status — calculation to be from date of transfer to full-time status; grievance dismissed. *Re Sudbury Algoma Hospital & C.U.P.E., Loc. 1023; Phillips grievance*, Dec. 13, 1983. McKechnie — 10 pages. (127)

Entitlement to vacation credits — credits continue to accrue for duration of strike where entitlement on basis of employment, not active employment, absent contractual language to the contrary; grievances allowed. *Re Niagara Regional Health Unit & O.N.A.; Hagley, Wood, Neufeld, Sacks et al grievances*, Nov. 16, 1983. Majority: Rose, Robbins; dissent: Anderson — 13 pages. (128)

#### Wages

Pay on day of injury: occupational accident — grievor to be paid for balance of shift; grievance allowed. *Re American Can Canada Inc. & Simcoe Can Workers, Loc. 535; Shurr grievance*, Dec. 23, 1983. Welling — 6 pages. (129)†

Temporary transfer of probationary “new” employees — transferees during progressive wage period to be paid at higher applicable rate; grievance allowed. *Re Interforest Ltd. & International Woodworkers; policy grievance*, Dec. 13, 1983. McKechnie — 10 pages. (130)†

#### Welfare Plans

Long-term disability — eligibility — grievor actively at work on effective date — company directed to receive an application for long-term disability benefits from grievor to be forwarded to insurer; grievance allowed. *Re Canada Packers Inc. & U.F.C.W.; Gregor grievance*, Jan. 27, 1984. Black — 15 pages. (131)†

Arbitrability — company only responsible to administer plan by submitting claims to carrier; jurisdiction lacking; grievance dismissed. *Re Pullman Trailmobile Canada Limited & U.A.W., Loc. 397; policy grievance*, Jan. 19, 1984. Hunter — 13 pages. (132)†

Long-term disability: plan set out in agreement — employer bound to pay benefits when insurer will not; disability established; grievance dismissed. *Re Abitibi-Price Inc., Lakehead Woodlands Division & Lumber and Sawmill Workers, Loc. 2693; Duguay grievance*, Oct. 15, 1983. Majority: Palmer, Davidson; dissent: Luker — 36 pages. (133)

Sick-leave plan — collective agreement does not exclude possibility that carrier may place additional conditions on plan — plan implemented; grievance dismissed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; policy grievance*, Nov. 28, 1983. Majority: Duchesneau-McLachlan, Holt; dissent: Simpson — 11 pages. (134)

Weekly-indemnity disability insurance — benefits under group insurance plan discontinued at end of month in which grievor laid off because of work shortage — company's only obligation to arrange for and pay premiums of insurance; grievance dismissed. *Re Jarvis Clark Company Limited & U.S.W.A., Loc. 7282; Souliere grievance*, undated. Majority: Palmer, Churchill-Smith; dissent: Guillet — 13 pages. (135)

#### Work Assignment

Change of job duties — change flows from management reorganization — within management rights; grievance dismissed. *Re Ontario English Catholic Teachers' Association & O.P.E.I.U., Loc. 343; Bird grievance*, Jan. 13, 1984. Black — 10 pages. (136)†

Change of work schedule — schedule appended to contract followed for a number of years — mentioned in agreement; not unilaterally alterable; grievance allowed. *Re Dow Chemical of Canada Ltd. & E.C.W.U., Loc. 672; policy grievance*, Nov. 3, 1983. Rayner — 8 pages. (137)†

Class size — change in practice due to budgetary constraints not proved to enlarge class sizes; grievance dismissed. *Re York University & York University Faculty Association; File et al grievance*, Jan. 24, 1984. Brent — 28 pages. (138)

Change of procedure to cut overtime costs — specific method of “balloting” for work incorporated in agreement — specific arrangement for assignment supplants general management rights; grievance allowed. *Re Mississauga City Transit Department & A.T.U., Loc. 1572; policy grievance*, Jan. 11, 1984. Knopf — 16 pages. (139)†

Inequitable work load alleged — co-ordinator duties not included in calculation of hours — unfair to assign additional hours for summer in April; grievance allowed in part. *Re Lambton College & O.P.S.E.U.; Grevstad grievance*, Jan. 13, 1984. Majority: H. Brown, Bounsall; dissent: Wright — 21 pages. (140)

Licence downgraded — grievor medically fit; employer under no obligation to place grievor in alternate employment until situation corrected; grievance dismissed. *Re St. Catharines Transit Commission & A.T.U., Loc. 846; Paton grievance*, Jan. 26, 1984. Hinnegan, McLaughlin, Connell — 5 pages. (141)

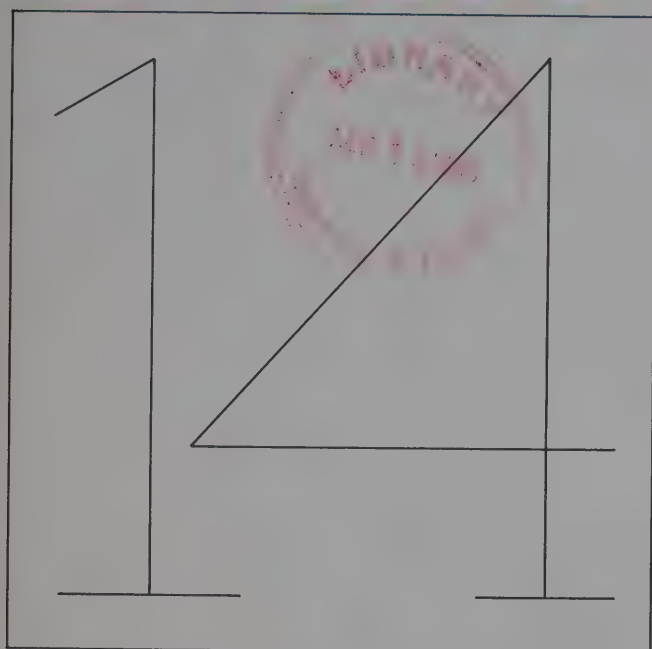
Management performing bargaining-unit work — past practice and no language contrary; grievance dismissed. *Re Harbour Castle Hilton Hotel (Toronto) & Textile Processors, Service Trades, Health Care, Professional and Technical Employees, Loc. 351; policy grievance*, Dec. 28, 1983. Hearn — 11 pages. (142)†

Principal's prerogative to organize classes exceeding the operational-staffing practice guideline preserved, but does not diminish School Board's undertaking to maintain no more than twenty classrooms in excess of the current staffing practice; grievance allowed. *Re Hamilton-Wentworth Roman Catholic Separate School Board & Ontario English Catholic Teachers' Association; policy grievance*, Dec. 30, 1983. P. Picher, Wahl, Whelan — 13 pages. (143)

#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

# Monthly Bulletin



Ontario Ministry of Labour



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T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1978, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Change of Address

The following change should be noted effective immediately:

Miss Jane H. Devlin, Barrister & Solicitor, 1240 Bay Street, Suite 307, Toronto, Ontario, M5R 2A7; telephone (416) 964-8215 (unchanged).

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of February, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Adjustment of piece-work rates — agreement only concerned with new processes; grievance not arbitrable. *Re Bilt-Rite Upholstering Co. Ltd. & Upholsterers International of North America, Loc. 30; group grievance*, Feb. 20, 1984. McKechnie — 7 pages. (1)†

Hiring policies alleged to be in conflict with hiring criteria stipulated in collective agreement — no threshold violation; no arbitrable difference; grievance dismissed. *Re University of Toronto & Canadian Union of Educational Workers, Graduate Assistants' Association, Loc. 2; policy grievance*, Feb. 22, 1984. Majority: Burkett, Binning; dissent: Saunders — 20 pages. (2)



Jurisdiction of s.45 arbitrator — employer applied under s.45 after notification that union had named nominee — no bar to jurisdiction; union objection dismissed. *Re London, Corporation of City of, & C.U.P.E. Loc. 101; Underwood grievance*, Feb. 14, 1984. Brent — 7 pages. (3)\*†

Withdrawal of earlier identical grievance on work assignment — constitutes estoppel — grievance also untimely — time starts to run when assignment made, not a continuing grievance; grievance dismissed. *Re Inco Metals Co. & Canadian Guards Association, Loc. 105; union policy grievance*, Feb. 28, 1984. Majority: Kennedy, Pigott; dissent: McVey — 17 pages. (4)

#### Bargaining Unit

Assistant supervisor position — position not excluded; grievance allowed. Association to be reimbursed for loss of dues to date of award. *Re Kingston General Hospital & O.N.A.; policy grievance*, Feb. 13, 1984. Carter — 11 pages. (5)

Establishment of second plant beyond boundaries of union's recognition clause — second plant's workers performing some jobs previously done by first plant's; beyond scope of recognition clause; grievance dismissed. *Re C.H. Heist (Canada) & U.S.W.A.; Coles, Coles, De Roos grievance*, July 26, 1983. Devlin — 19 pages. (6)†

Scope — employee found not to be exercising managerial functions nor employed in a confidential capacity in matters relating to labour relations; employee a payroll-accounting clerk; grievance allowed. *Re Ontario Dairy Herd Improvement Corporation & O.P.S.E.U.; union grievance*, Feb. 20, 1984. Majority: Weatherill, McManus; dissent: Ubels — 11 pages. (7)

Work — experience student performing bargaining-unit work — not an employee because not paid at all; qualifies for exemption to contracting-out prohibition; grievance dismissed. *Re Timmins, Corporation of City of, & C.U.P.E. Loc. 1140; union grievance*, Feb. 7, 1984. Duchesneau-McLachlan — 18 pages. (8)†

#### Classification

Higher classification claimed — intake-level course taught not considered to be "academic post secondary"; extent of workload considered; grievance dismissed. *Re Lambton College of Applied Arts and Technology & O.P.S.E.U.; Cardwardine grievance*, Feb. 7, 1984. Majority: Brent, Gray; dissent: Beaulieu — 15 pages. (9)

Higher classification sought — initiative, competence, responsibility established; grievance allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Humber grievance*, Jan. 31, 1984. M. Picher — 7 pages. (10)

Higher classification as machine operators claimed — insufficient evidence to support conclusion that work performed by grievors of operating lift truck falls outside of general labourer classification or falls inside machine operator classification; grievance dismissed. *Re Highland Beverages Limited & United Brewery Workers; group grievance*, Feb. 6, 1984. Weatherill — 6 pages. (11)\*

Higher classification claimed — not established — job duties performed falling within grievor's present classification; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & Metropolitan Toronto Civic Employees, C.U.P.E. Loc. 43; Mosca grievance*, Jan. 17, 1984. Majority: Swan, Beresford; partial dissent: Tate — 23 pages. (12)\*

Partial-load employees — status defined by virtue of hours a person works "on a regular basis" — interpretation not directed to issue of whether person is regularly employed as alleged by union; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; union grievance*, Feb. 7, 1984. Majority: Brent, Hoddle; dissent: Beaulieu — 14 pages. (13)

Proper classification of employee as partial load or sessional to be brought as individual grievance — issue of whether employee had "unreasonable teaching load" arbitrable as policy grievance — insufficient evidence to establish breach; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; union grievance*, Feb. 1, 1984. Majority: Brent, Hallsworth; dissent: McManus — 15 pages. (14)

#### Collective Agreement

Unilateral creation of jobs and rates of pay during negotiations — wage structure part of collective agreement — alterations must be negotiated; grievance allowed. *Re Cochrane Temiskaming Resource Centre & O.P.S.E.U., Loc. 664; policy grievance*, Feb. 21, 1984. Baum — 9 pages. (15)†

Retroactivity of bereavement-pay clause of new agreement — not one of provisions expressly said to be retroactive — not covered by old agreement after expiry of freeze period; grievance not arbitrable. *Re Labatt's Ontario Breweries (London Plant) & National Brewery Workers, Loc. 1; Jarman grievance*, Jan. 30, 1984. Brent — 12 pages. (16)

Retroactivity of dues check-off provision — not retroactive; grievance dismissed. *Re St. Joseph's Villa, Cornwall & C.U.P.E. Loc. 2717; union grievance*, Jan. 25, 1984. Carrothers — 7 pages. (17)†

#### Contracting Out

Employees of temporary-help agency performing bargaining-unit work — longtime practice — no prohibition against contracting out this work — not held to be employees of this employer; grievance dismissed. *Re Firestone Canada Inc. & United Rubber Workers, Loc. 113; union policy grievance*, Feb. 20, 1984. Lerner — 18 pages. (18)†

Attempt to sub-contract delivery work — employer exercising actual control; grievance allowed; declaration of employee status. *Re Ralston Purina Canada Inc. & U.F.C.W.U., Loc. 1190P; union grievance*, Feb. 6, 1984. Weatherill — 8 pages. (19)

Employer prohibited from contracting out with intention to effect lay-off — no evidence of intention or purpose of laying-off; grievance dismissed. *Re St. Joseph's Health Centre Toronto & C.U.P.E. Loc. 1144; policy grievance*, Jan. 30, 1984. Brandt — 14 pages. (20)

#### Damages

Calculation of compensation — compensation to date from original lay-off until grievor called back to work, less money received from Unemployment Insurance and less money for three days absence after recall, plus benefits contributions. *Re Dresser Canada, Inc. Industrial Products Division & U.S.W.A., Loc. 5475; Bartley grievance*, Feb. 3, 1984. Sheppard — 4 pages. (21)

Interest — arbitration board in colleges sector has authority to entertain grievance seeking only interest — may award damages for breaches under previous agreements if they are continuing; grievance arbitrable. *Re Centennial College of Applied Arts and Technology & O.P.S.E.U.; Rosentisch grievance*, Feb. 20, 1984. Majority: Brent, Kaufman; dissent: Shields — 10 pages. (22)

### Demotion

Incompetence in probationary period as foreman alleged — established — grievor's quality of work, knowledge of work, judgement, adherence to system regulations unsatisfactory; grievance dismissed. *Re Toronto Electric Commissioners & C.U.P.E.; Whitlock grievance*, undated. Kruger — 17 pages. (23)

### Discharge

Absence due to incarceration — employer refusal to participate in TAP program within its rights — dismissal not fair considering grievor's good record over the eleven years; reinstatement without compensation. *Re Lake Ontario Steel Co. Ltd. & U.S.W.A. Loc. 6571; Waller grievance*, Feb. 15, 1984. M. Picher — 20 pages. (24)

Absenteeism for many different medical reasons — no proof of future incapacity — failure to call in is worthy of discipline; conditional reinstatement without compensation. *Re Molson's Brewery (Ontario) Ltd. & United Brewery Workers, Loc. 304; Seim grievance*, Jan. 30, 1984. Brandt — 24 pages. (25)\*

Absenteeism — grievor had been conditionally reinstated for nine-month trial period — grievor arbitrarily denied substitution of vacation days for sick days; when considered, grievor's absence rate below company average; grievance allowed, grievor to be reinstated, compensated for lost wages and benefits. *Re Hiram Walker and Sons Ltd. & U.A.W., Loc. 2027; Thrasher grievance*, Feb. 24, 1984. Verity — 13 pages. (26)†

Alteration of grounds following interim award — company restricted to original grounds; grievance allowed. *Re Nacan Products Ltd. & E.C.W.U., Loc. 819; Cutt grievance*, Feb. 22, 1984. Boscariol — 7 pages. (27)†

Assault on another employee — grievor being harassed — only intent to frighten employee off; five-month suspension substituted. *Re Ottawa Roman Catholic Separate School Board & Service and Commercial Employees, Loc. 272; Sarrazin grievance*, Feb. 24, 1984. Fraser — 15 pages. (28)†

Assault upon supervisor — grievor deserving of second chance; reinstated without pay provided grievor writes apology. *Re Cleveland-CAE Metal Abrasive Division of CAE Industries Limited & U.S.W.A., Loc. 1877; Totten grievance*, Feb. 1, 1984. Wilson — 8 pages. (29)†

Breach of statutory duty — no justification at time of breach; grievance dismissed. *Re Children's Aid Society of Niagara Region & C.U.P.E. Loc. 2328; Zambrzycki grievance*, Feb. 8, 1984. Lerner — 28 pages. (30)†

Conversion of employer's property to grievor's own use alleged — not established; grievance allowed. *Re Ottawa-Carleton, Regional Municipality of, & C.U.P.E. Loc. 2187; Pelletier grievance*, Feb. 9, 1984. Majority: Brunner, Marks; dissent: Parnega — 105 pages. (31)

Culminating incident: horseplay — past record of horseplay considered; grievance dismissed. *Re Russelsteel & U.S.W.A., Loc. 5958; Joncas grievance*, Jan. 31, 1984. Lerner — 11 pages. (32)†

Culminating incident — intoxication — progressive discipline imposed; grievance dismissed. *Re American Can Canada Inc. & Can Workers' Federal Union, Local 354; Legedza grievance*, Feb. 16, 1984. McKechnie — 22 pages. (33)†

Culminating incident: work improperly performed followed by improper documentation of work actually done — grievance dismissed. *Re Bristol-Myers Pharmaceutical Group & U.A.W., Loc. 1538; Stickle grievance*, Feb. 22, 1984. Devlin — 16 pages. (34)†

Disability — discharge resulting in inability to apply for long-term disability benefits; reinstatement for purpose of allowing grievor to exercise disability pension rights. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Metro Toronto Civic Employees, Loc. 43; Pelletier grievance*, Feb. 20, 1984. Black — 15 pages. (35)†

Illness — grievor now able to return for work — grievor failed to inform company earlier of his medical condition; conditional reinstatement without compensation. *Re Certified Automotive Products (Central) Ltd. & U.S.W.A. Loc. 14831; Mann grievance*, Jan. 28, 1984. Palmer — 4 pages. (36)

Information pickets — no strike — no lock-out clause not covering information pickets; all employees reinstated. *Re Brantwood Manor Nursing Homes Ltd. & C.U.P.E., Loc. 1712; multiple grievances*, Feb. 10, 1984. Verity — 12 pages. (37)†

Insubordination — failure to perform assigned work — past record considered; grievance dismissed. *Re National Edible Oils, Unit of Canada Packers & U.F.C.W.U., Loc. 208; Neblett grievance*, Feb. 1, 1984. Schiff — 5 pages. (38)†

Insubordination — no threat intended and no physical assault; past record considered; suspension substituted. *Re General Coach & United Brotherhood of Carpenters and Joiners, Loc. 3054; Lansbergen grievance*, Feb. 6, 1984. Brent — 12 pages. (39)†

Insubordination — taking "leave" after it had specifically been denied — leave not unjustly denied; employer's requirements considered greater than grievor's; grievance dismissed. *Re Sir Sanford Fleming College & O.P.S.E.U.; Pitcher grievance*, Jan. 24, 1984. Majority: H. Brown, Shields; dissent: Kearney — 42 pages. (40)

Insubordination; grievor starting work early without manager's authorization — request by lead hand reasonably interpreted as authorization; grievor should have confirmed; grievor reinstated with no loss of seniority and compensation from date of hearing. *Re Cecutti's Bakery Limited & Warehousemen Transportation and General Workers, Loc. 715; Alvarenga grievance*, Jan. 26, 1984. Duchesneau-McLachlan — 7 pages. (41)†

Misuse of telephone system — long-service employee with good record; reinstatement and restitution ordered; grievance allowed in part. *Re Northern Telephone Limited & Communications Workers; Pascoe grievance*, Feb. 24, 1984. Majority: Verity, Sanderson; partial dissent: Mather — 9 pages. (42)

Probationary employee — discrimination alleged on basis of grievor's diabetic condition — not established — no right to review for just cause; grievance dismissed. *Re Niagara Regional Health Unit & O.N.A.; Hodgins grievance*, Feb. 20, 1984. Majority: Betcherman, Barley; dissent: Symes — 19 pages. (43)

Possession of goods stolen from customer — no evidence to suggest employee could be entrusted with care and custody of mail; grievance dismissed. *Re Canada Post Corporation & Letter Carriers' Union; Brooks grievance*, Jan. 26, 1984. Jolliffe — 22 pages. (44)

Section 61.5 of Canada Labour Code: participation in scheme to use one customer's overages to cover tellers' other shortages — mitigating factors: comparison with tellers' light penalties, eight-year service, orders from superior; reinstatement without compensation to lower non-managerial position. *Re Canadian Imperial Bank of Commerce and Maria Tavares*, Jan. 31, 1984. P. Picher — 12 pages. (45)



Section 61.5 of Canada Labour Code: theft — senior bank branch employee devised scheme to use one customer's overages to cover tellers' shortages; dishonest testimony; grievance dismissed. *Re Canadian Imperial Bank of Commerce and Cindy Medeiros*, Jan. 31, 1984. P. Picher — 13 pages. (46)

Theft — evidence of co-conspirators unconvincing; grievor not believable; grievance dismissed. *Re Sutton Place Hotel & Hotel, Restaurant and Cafeteria Employees Loc. 75; Shah grievance*, Jan. 23, 1984. Majority: Teplitsky, Wakely; dissent: Tate — 8 pages. (47)

Theft by waitress alleged — evidence of tampering with cash register tapes; grievance dismissed. *Re Orangeroot Hotels Ltd., Howard Johnson's Airport Hotel & Hotel, Restaurant and Cafeteria Employees, Loc. 75; Gallagher grievance*, Feb. 9, 1984. Majority: Dunn, Ashbourne; dissent: Tate; addendum: Dunn — 15 pages. (48)

Theft: improper possession of master key — custodian in position of trust; grievance dismissed. *Re Victoria Hospital Corporation & London and District Service Workers, Loc. 220; Blandford grievance*, Feb. 8, 1984. Hinnegan — 11 pages. (49)†

Theft of company property attempted — last-minute admission of guilt; act premeditated; grievor active in community; employment relationship not irreparably damaged: four-month suspension substituted without pay or benefits. *Re Libby, McNeill and Libby of Canada & C.U.O.E., Loc. 100; Stanley grievance*, Feb. 1, 1984. Rayner — 8 pages. (50)

Theft of company property attempted — no mitigating factors — last-minute admission of guilt; grievance dismissed. *Re Libby, McNeill and Libby of Canada Limited & U.A.W., Loc. 251; Hunt grievance*, Jan. 27, 1984. Palmer — 7 pages. (51)

Theft of fellow employee's personal family photographs — facts admitted — grievor apparently suffering mental disorder; reinstatement conditional upon psychiatric counselling. *Re Seneca College of Applied Arts and Technology & O.P.S.E.U.; Allen grievance*, Feb. 16, 1984. Majority: H. Brown, Robbins; dissent: Correll — 18 pages. (52)\*

Trespass at night during strike — not just cause but subsequent conduct of grievor justifying refusal to reinstate; grievance dismissed. *Re Ethyl Canada Inc. & E.C.W.U., Loc. 300; Drummond grievance*, Feb. 16, 1984. Welling — 12 pages (53)\*†

Work performance; teller responsible for repeated shortages — discipline proper even though shortages paid by grievor — previous reinstatement by settlement containing a specific penalty for future occurrence; grievance dismissed. *Re Ontario Jockey Club & Mutuel Employees, Loc. 528 (S.E.I.U.); Wick grievance*, Feb. 6, 1984. Adams, Billings, Tate — 16 pages. (54)

Work performance — repeated carelessness on job requiring precise measurements; grievance dismissed. *Re A. Schulman Canada Ltd. & Teamsters Chemical, Energy and Allied Workers Loc. 1969; Wilkins grievance*, Jan. 25, 1984. Welling — 14 pages. (55)†

Work performance — warning not given to grievor, considering thirteen-year seniority; reinstatement without compensation. *Re Brian Cullen Motors Ltd. & U.A.W., Loc. 199; Dekker grievance*, Feb. 3, 1984. M. Picher — 10 pages. (56)

## Discipline

Absenteeism — grievor had permission to be absent; grievance allowed. *Re Electrohome Limited & I.B.E.W. Loc. 2345; Jutzi grievance*, Feb. 24, 1984. Hunter — 10 pages. (57)†

Absence without authorization — three-day suspension upheld; grievance dismissed. *Re Air Canada & I.A.M.; Eals grievance*, Dec. 5, 1983. Swan — 15 pages. (58)

Absence without notice — grievor aware of established practice to notify — grievor had received prior warning — management's right to maintain order and efficiency would also require prior notification of absence; grievance dismissed. *Re Cryovac Division, W.R. Grace and Co. of Canada Ltd. & C.U.O.E., Loc. 101; Hawkes grievance*, Jan. 13, 1984. Majority: O'Shea, Carrier; dissent: Robinet — 9 pages. (59)

Absence without notification — grievor absent for three days without sufficient reason; ten-day suspension reduced to three days. *Re Scarborough Public Utilities Commission & Utility Workers, Loc. 1; Manners grievance*, Feb. 14, 1984. Egan — 6 pages. (60)†

Absenteeism — last period of absence accompanied by medical certificate — employer could not demonstrate grievor was not ill; grievor to be compensated for time lost due to suspension and demotion. *Re Beacon Hill Lodges of Canada & S.E.I.U., Loc. 219; Cornette grievance*, Nov. 29, 1983. Majority: Swan, Lewis; dissent: Warkentin — 13 pages. (61)

Criminal charges — charges not precluding employee from effectively carrying out his duties; no just cause for suspension; grievance allowed. *Re Hamilton Hydro-Electric Commission & I.B.E.W., Loc. 138; Lee grievance*, Jan. 31, 1984. Devlin — 18 pages. (62)\*

Criminal charges: grievor suspended pending investigation — suspension for investigation period unnecessary; entitled to pay for time suspended; grievance allowed. *Re United Sawmill Ltd. & Lumber and Sawmill Workers; Duguay grievance*, Jan. 4, 1984. Majority: Swan, Fyshe; dissent: LaCroix — 14 pages. (63)\*

Culminating incident; grievor involved in third accident involving mobile equipment — concern for safety of other employees considered; permanent disentanglement to jobs involving mobile reduced to disentanglement until grievor can prove worthiness. *Re Sherman Mine, Cliffs of Canada & U.S.W.A., Loc. 6896; Renaud grievance*, Jan. 26, 1984. Duchesneau-McLachlan — 15 pages. (64)†

Fighting alleged — only evidence offered was written statement of other employee, which is hearsay; grievance allowed. *Re Dominion Stores Ltd. & R.W.D.S.U., Loc. 414; Johnston grievance*, Feb. 22, 1984. Majority: Brunner, Dahmer; dissent: White — 10 pages. (65)

Insubordination and disrespect towards supervisor — grievor overreacted to supervisor's comments; past record considered; two-day suspension was appropriate. *Re Kendall Canada Ltd. & U.S.W.A., Loc. 8505; O'Daniel grievance*, Feb. 10, 1984. Foisy — 15 pages. (66)†

Insubordination: grievor refused direct order to immediately perform work assignment — mitigating circumstances; three-day suspension reduced to one day. *Re Ethyl Canada Inc. & E.C.W.U., Loc. 300; Hidbert grievance*, Feb. 23, 1984. Hinnegan — 6 pages. (67)†

Insubordination: leaving work early despite request to so leave denied — no grounds to vary penalty; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Loc. 5417; Stacknik grievance*, Feb. 7, 1984. P. Picher — 17 pages. (68)

Insubordination — poor past record; grievor refused to acknowledge misconduct; seven-week suspension upheld; grievance dismissed. *Re Avon Sportswear & United Garment Workers; Courtney grievance*, Feb. 23, 1984. Devlin — 15 pages. (69)†

Insubordination: refusal to discuss work assignment with supervisor — not a disciplinary meeting requiring steward; six-day suspension was appropriate. *Re Kendall Canada Ltd. & U.S.W.A., Loc. 8505; O'Daniel grievance*, Feb. 10, 1984. Foisy — 11 pages. (70)†

Insubordination: refusal to perform assigned work — attitude, previous general warning and work record considered; grievance dismissed. *Re Witco Chemical Canada Ltd. & U.F.C.W.U., Loc. 1000A; Naraine grievance*, Feb. 9, 1984. Weatherill — 7 pages. (71)

Insubordination: refusal to work overtime — compulsory overtime contemplated by collective agreement; grievor offered no explanation for refusal to follow direct order — past disciplinary record may be considered when imposing progressive discipline; grievance dismissed. *Re Toronto Star & Graphic Communications, Loc. N1; Brown grievance*, Feb. 24, 1984. Baum — 10 pages. (72)

Intoxication — five-day suspension reasonable; grievance dismissed. *Re Franklin Manufacturing Company Limited & I.A.M., Loc. 1246; Maderos grievance*, Jan. 26, 1984. P. Picher, Perron, Lewis — 13 pages. (73)

Lateness — previous incident ten months earlier — not a mitigating fact since agreement calls for record to be expunged after eighteen months — repeated sleeping-in is a serious infraction; five-day suspension upheld. *Re Macdonnell Memorial Hospital & C.U.P.E., Loc. 2274; O'Byrne grievance*, Feb. 4, 1984. Kates — 7 pages. (74)

Lateness and absenteeism — disciplinary guidelines relaxed in the past equally for all employees — no discriminatory application; grievance dismissed. *Re Chrysler Canada Ltd. & U.A.W., Loc. 1285; Cobden grievance*, Feb. 20, 1984. Kennedy — 10 pages. (75)

Notice of interview — constitutes a disciplinary report — admissible in evidence since placed in file within ten days of when employer aware of infraction (or when investigation complete); grievance arbitrable. *Re Canada Post Corporation & Letter Carriers' Union; Heintz grievance*, Feb. 16, 1984. Saltman — 15 pages. (76)

Procedure: union representative not present when discipline imposed — grievor requesting representative, employer not thinking it necessary — duty of employer to ensure presence if requested; grievance allowed. *Re Toronto Western Hospital & C.U.P.E., Loc. 1744; Francois grievance*, Feb. 23, 1984. Houston — 10 pages. (77)†

Suspension pending resolution of criminal charges of book-making — just and reasonable in the circumstances; grievance denied. *Re Ontario Jockey Club & Mutuel Employees, Loc. 528, S.E.I.U.; Bettridge grievance*, Feb. 21, 1984. Majority: Kates, Billings; dissent: Tate — 24 pages. (78)

Safety infraction alleged — established — no reason to alter penalty imposed; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Loc. 5417; Santerre grievance*, Feb. 15, 1984. O'Shea — 12 pages. (79)

#### Estoppel

Bumping rights — grievor who bid down for job due to ill health estopped from bumping up into previous classification upon lay-off; grievance dismissed. *Re Heckett (Division*

*of Harsco Corporation) & U.S.W.A., Loc. 7577; Toner grievance*, Jan. 21, 1984. Rayner — 10 pages. (80)

Job-posting procedure — established to allow employees to bid on "better" jobs within their own classification; grievance allowed. *Re Consumers Glass Company Limited, Milton, & United Glass and Ceramic Workers, Loc. 269; policy grievance*, Feb. 2, 1984. Beatty — 9 pages. (81)\*

Job posting: union acquiesced in employer's decision then brings grievance — estoppel not a defence where selection process unfair and unreasonable; new competition ordered. *Re Windsor, Corporation of City of, & C.U.P.E., Loc. 543; Saddy grievance*, Feb. 21, 1984. Lerner — 15 pages. (82)†

Super-seniority clause — estoppel does not arise at bargaining table when negotiations lead to new provision; must be prior provision about which there could be representations or conduct to alter strict legal rights; grievance allowed. *Re Ellenzweig Bakery Limited, Division of General Bakeries Limited, & Retail, Wholesale, Bakery and Confectionery Workers; Solin grievance*, Feb. 13, 1984. McLaren; dissent: Redford; union nominee Spaxman died prior to issuing of award — 23 pages. (83)\*

#### Evidence

Admissibility of memorandum of agreement concerning practice with respect to contracting out and lay-offs admissible — company guidelines of intended practice admissible; interim award. *Re Bell Canada & Communications Workers; policy grievance*, Jan. 31, 1984. Majority: Burkett, Robbins; dissent: Churchill-Smith — 7 pages. (84)

Medical evidence presented by union two days before hearing — adjournment granted to employer; admissibility rests on availability of doctor for cross-examination; employer request for an independent examination denied. *Re Margaret's Fine Foods Ltd. & Milk and Bread Drivers, Teamsters Loc. 647; Ateshin grievance*, Feb. 6, 1984. Wilson — 9 pages. (85)†

Privilege of confidentiality alleged — materials relating to decision as to tenure — privilege established in part as to evaluations and references by colleagues and minutes of deliberations; interim award. *Re Ontario Institute for Studies in Education & O.I.S.E. Faculty Association; union grievance*, Feb. 15, 1984. Knopf, Siegel, Choudry — 15 pages. (86)

#### Holiday Pay

Floating holiday for part-time employees — held to be a paid holiday, but covered by percent in lieu of benefits; grievance dismissed. *Re Bruce Peninsula and District Memorial Hospital & O.P.S.E.U., Loc. 250; Isbester grievance*, Feb. 21, 1984. Majority: Saltman, Cancilla; dissent: Robbins — 19 pages. (87)

Floating holiday occurring during lay-off — subject to same qualifying conditions as statutory holidays; conditions not met; grievance dismissed. *Re Polygon Industries Ltd. & C.U.O.E., Loc. 101; policy grievance*, Jan. 30, 1984. Boscariol — 5 pages. (88)†

Hours in working day deduced — former hours incorporated in agreement — ambiguity resolved in favour of reduced hours that would have been scheduled; grievance dismissed. *Re Imperial Surgical Co. & Sheet Metal Workers, Loc. 540; policy grievance*, Oct. 27, 1983. Beck — 10 pages. (89)†



**Illness**

Fitness to return to work — company having burden of proving its decision to not allow employee to return to work was reasonable and *bona fide*; reinstatement conditional upon favourable medical opinion. *Re Somerville Belkin Industries Limited, Plastics Division & Amalgamated Clothing and Textile Workers, Loc. 1823; Smith grievance*, Feb. 24, 1984. Majority: McLaren, Churchill-Smith; dissent: Mallett — 25 pages. (90)

Fitness to return to work — due to length of absence and seriousness of injury company could request further evidence; note from company doctor complied; grievance allowed. *Re FMC of Canada Limited, Hydraulic Crane Division & U.A.W., Loc. 636; Bryan grievance*, Jan. 27, 1984. Palmer — 7 pages. (91)

Fitness to return to work — not established by union to be 100 per cent fit for any job at her level; grievance dismissed. *Re P & H Foods, Division of Parrish & Heinbecker Ltd., & U.F.C.W.U., Loc. 1105P; Eidt grievance*, Feb. 2, 1984. Sheppard — 16 pages. (92)†

**Job Evaluation**

Requirements and responsibilities — part of job requiring greater responsibilities; grievance allowed in part. *Re Toronto Public Library Board & C.U.P.E., Loc. 1996; Lobo grievance*, Dec. 22, 1983. Majority: O'Shea, McCormack; dissent: Richardson — 14 pages. (93)

**Job Posting**

Procedures not extending to nurse hired on term contract to replace a nurse on maternity leave; grievance dismissed. *Re Kirkland Lake and District Hospital & O.N.A., Theriault grievance*, Jan. 13, 1984. Majority: Teplitsky, Winkler; dissent: Richards — 6 pages. (94)

Prohibition against trainees bidding on job — incumbent quit training position, then bid on job using new qualifications — not a violation; grievor properly laid-off ahead of incumbent; grievance dismissed. *Re Byron Jackson Division, Borg-Warner (Canada) Ltd. & I.A.M.; individual grievance*, Feb. 22, 1984. Teplitsky — 7 pages. (95)

Transfer of most senior employee in department to different job duties in daytime hours within same classification not required to be posted; grievance dismissed. *Re Labatt's Ontario Breweries, & United Brewery Workers, Loc. 304; policy grievance*, Feb. 10, 1984. McLaren — 11 pages. (96)

**Job Vacancy**

Existence of vacancy — not established — company entitled to organize work force and allocate work as between full-time and part-time employees; grievance dismissed. *Re Sudbury Wide Telephone Answering Service & U.S.W.A.; policy grievance*, Feb. 21, 1984. Black — 11 pages. (97)

**Lay-off**

Bumping rights — grievor bid down for job due to ill health — grievor estopped from bumping up into previous classification upon lay-off; grievance dismissed. *Re Heckett (Division of Harsco Corporation) & U.S.W.A., Loc. 7577; Toner grievance*. See (80), *supra*. (98)

Qualifications — senior grievor capable of becoming proficient in job within reasonable period of time; grievance allowed. *Re Canforge, Division of Toromont Industries & U.A.W., Loc. 275; policy grievance*, Feb. 9, 1984. Weatherill — 9 pages. (99)

Qualifications — senior grievor could not perform same duties as employees retained; skill and ability not relatively

equal — grievor not permitted to bump up to lead hand position; grievance dismissed. *Re Bulova Watch Company Ltd. & U.S.W.A., Loc. 1111; Zaharias grievance*, Jan. 23, 1984. H. Brown — 13 pages. (100)

Reduction of hours — constituting lay-off; seniority to be considered; grievances allowed in part. *Re TAS Communications Services & Communications Workers; multiple grievances*, Feb. 10, 1984. Weatherill — 7 pages. (101)

Use of part-time or seasonal employees only precluded if full-time employees are laid-off or working less than standard hours — no employees at work on one-day lay-off; grievance dismissed. *Re Consumers Distributing Company Limited & Teamsters Loc. 419; policy grievance*, Feb. 1, 1984. Devlin — 13 pages. (102)

**Overtime**

Distribution — employee who normally performs task involved in overtime to be given priority over employee temporarily performing job; grievance allowed. *Re Continuous Colour Coat Ltd. & U.S.W.A.; Fenton grievance*, Feb. 7, 1984. Betcherman — 4 pages. (103)†

Distribution — to be offered to employees in same group of job classifications initially on a rotating basis, thereafter in order of seniority and equalized as far as is practical; grievances allowed. *Re Raybestos Canada Inc. & U.S.W.A.; Golloher and Falls grievances*, Feb. 21, 1984. McLaren — 9 pages. (104)

Distribution — work assigned not exclusively that of grievor's classification; length of overtime considered, grievance dismissed. *Re Continuous Colour Coat Ltd. & U.S.W.A.; Mistry grievance*, Feb. 6, 1984. Betcherman — 5 pages. (105)†

Entitlement — distribution of overtime to be equitable among employees within a department who perform similar class of work — grievor having relatively fewer overtime credits and entitled to assignment; grievance allowed. *Re 3M Canada Limited & E.C.W.U., Loc. 294; Fluke grievance*, Feb. 20, 1984. M. Picher — 11 pages. (106)

Entitlement — no restriction preventing employer from assigning packers' work temporarily to employees who are not within packers classification for business reasons — grievor not solely entitled to the work; grievance dismissed. *Re Hershey Canada & R.W.D.S.U., Loc. 461; Coughlin grievance*, Jan. 26, 1984. Lyons, Foy, Barron — 5 pages. (107)

Entitlement — short period of time following afternoon shift — employer only required to ask employees on preceeding shift to perform prior to allowing management personnel to "help out"; grievances dismissed. *Re M. Loeb Limited & Warehousemen, Transportation and General Workers, Loc. 715; Julien, Ethier, Prinowski, Gaudreau grievances*, Feb. 16, 1984. Solomatenko — 8 pages. (108)†

**Pensions**

Entitlement and calculation of benefit — employee not entitled to receive both amount payable under long-term disability insurance plan as well as long-term disability benefits of pension plan. *Re DeHavilland Aircraft of Canada & U.A.W., Loc. 112; board of administration meeting minutes*, Jan. 31, 1984. Lerner — 20 pages. (109)

Pension fund contributions — where included in collective agreement all employees bound to contribute; no individual authorization necessary to allow automatic pay cheque deduction; grievance allowed. *Re Valhalla Inn Ltd. & Hotel Employees, Restaurant Employees, Loc. 75; union grievance*, Feb. 6, 1984. Davis — 6 pages. (110)†

### Premium Pay

Overtime pay and holiday pay serving separate purposes — no pyramiding of benefits; employee who works overtime on holiday entitled to be paid at overtime rate plus regular rate for holiday pay; grievance allowed in part. *Re Metropolitan Toronto, Municipality of, & Metropolitan Civic Employees' Union, Loc. 43; group grievance*, Jan. 24, 1984. Majority: P. Picher, Tate; dissent: Beresford — 21 pages. (111)\*

Pyramiding of premiums — time and one-half premium paid for Saturday no different from time and one-half hourly overtime premium; overtime hours on Saturday entitled to only one premium; grievance dismissed. *Re Imperial Clevite & I.A.M., Loc. 1975; Chambers grievance*, Feb. 7, 1984. R.J. Roberts — 9 pages. (112)†

### Probationary Employee

Permanent probationary employee — classification — date of commencement of employment is date employment commenced regardless of employment status — casual employment credited to continuous service — grievor employed continuously for more than six months; grievance arbitrable. *Re Toronto, Corporation of City of, & Toronto Civic Employees, Loc. 43, C.U.P.E.; individual grievance*, Feb. 7, 1984. Majority: Knopf, Tate; dissent: Milks — 17 pages. (113)

### Promotion

Qualifications: competitive clause — incorrect weighing of relevant experience factors — new competition ordered; grievance allowed. *Re Carleton University & C.U.P.E., Loc. 2424; Villeneuve grievance*, Feb. 9, 1984. Roach — 18 pages. (114)†

Qualifications: competitive seniority clause — successful applicants more involved in continuing education; grievance dismissed. *Re Hamilton Civic Hospitals & C.U.P.E., Loc. 794; Kilmartin grievance*, Feb. 15, 1984. M. Picher — 20 pages. (115)†

Qualifications — employer formed its conclusions on basis of solid information that pertained to general factors outlined in collective agreement; grievor less qualified; grievance dismissed. *Re Victoria Hospital Corporation & London and District Service Workers, Loc. 220; Brock grievance*, Feb. 18, 1984. Kates, McDonald, Billings — 10 pages. (116)

Qualifications — grievor lacking requisite skill and knowledge of job to be relatively equal to junior incumbent; grievance dismissed. *Re Continuous Colour Coat Limited & U.S.W.A., Loc. 7686; Salmon grievance*, Jan. 30, 1984. Foisy — 10 pages. (117)†

Qualifications — grievor not previously trained or familiar enough with all aspects to be considered for crew leader; grievance dismissed. *Re Loblaw's Ltd. & R.W.D.S.U., Loc. 579; Slivinski grievance*, Jan. 31, 1984. Duchesneau-McLachlan — 9 pages. (118)†

Qualifications — grievor's skills and ability not relatively equal to those of incumbent; grievance dismissed. *Re Noranda Mines Limited & Canadian Union of Base Metal Workers; Halloran grievance*, Feb. 24, 1984. H. Brown — 17 pages. (119)

Qualifications — senior grievor did not have equivalent qualifications — duties performed in lower job not sufficient — no discrimination or bad faith; grievance dismissed. *Re Abitibi-Price Inc., Sault Ste. Marie Division, & O.P.E.I.U., Loc. 214; Graham grievance*, Jan. 30, 1984. H. Brown — 16 pages. (120)

Qualifications — tests for qualifications not appropriate — rerunning of competition on different criteria ordered; grievance allowed. *Re Scarborough, Corporation of City of, & Scarborough Fire Fighters Association; Chandler grievance*, Jan. 17, 1984. Swan — 33 pages. (121)

### Recall

Entitlement — grievors not entitled to exercise recall rights in relation to hiring of sessional employees but exist in relation to full-time employees; grievances dismissed. *Re Niagara College of Applied Arts and Technology & O.P.S.E.U.; Kelly and Nemcko grievances*, Feb. 23, 1984. Majority: H. Brown, Gray; dissent: Robinson — 19 pages. (122)

Last laid-off from a position is first recalled — provision cannot be defeated by notional transfer and lay-off after last real lay-off; grievance allowed. *Re Clark Equipment of Canada Ltd. & I.A.M., Loc. 2469; Rose grievance*, Feb. 22, 1984. Brent — 10 pages. (123)

Temporary employees hired to fill vacancy while senior grievor laid-off — management right to hire temporary employees subject to seniority rights — vacancy includes both temporary and permanent vacancies; grievance allowed, compensation ordered. *Re Eastern Provincial Airways Limited & C.A.L.E.A.; Rafuse grievance*, Jan. 26, 1984. O'Shea — 12 pages. (124)

Temporary employees hired while senior grievors on lay-off — seniority a significant right; grievances allowed, compensation ordered. *Re Champion Road Machinery Limited & I.A.M., Loc. 1863; Carrick, Good, Hill grievances*, Jan. 6, 1984. Majority: Brandt, Lewis; dissent: Sargeant — 10 pages. (125)

### Reporting Pay

No work available on day shift — grievors worked afternoon shift — guarantee of four hours pay in the day was met; grievance dismissed. *Re Canadian Foam Ltd. & U.A.W., Loc. 127; Hollis and McCracken grievance*, Jan. 27, 1984. Palmer — 5 pages. (126)

### Res Judicata

Similar issue determined by earlier board — essential facts similar; issue previously settled; grievance allowed. *Re Seneca College & O.P.S.E.U.; Phillips grievance*, Jan. 18, 1984. Majority: H. Brown, Cochrane; dissent: Beaudoin — 17 pages. (127)

### Retirement

Termination for economic reasons after retirement age — amounts to retirement with entitlement to benefits; grievances allowed. *Re Canada Machinery Corporation Ltd. & U.S.W.A., Loc. 2905; Schill et al grievances*, Jan. 26, 1984. Palmer — 7 pages. (128)

### Seniority

Applicable prior experience — wrong test of relevance used; grievance allowed. *Re York University & Canadian Union of Educational Workers; Agnew grievance*, Jan. 2, 1984. Majority: M. Picher, Rogers; dissent: Cowles — 28 pages. (129)

Breach of seniority provision — grievor to be compensated for wages and benefits from date he should have been awarded job; grievance allowed. *Re Inco Metals Company & U.S.W.A., Loc. 6500; Smith grievance*, Feb. 21, 1984. Hinnegan, Pigott, Gerard — 6 pages. (130)



Super-seniority — some of available work could have been performed by grievor; grievance allowed in part. *Re Long Manufacturing Division (Borg-Warner (Canada) Limited) & I.A.M.*, Loc. 2330; Shoemaker grievance, Feb. 10, 1984. Majority: M. Picher, Lewis; addendum: Boehmer — 11 pages. (131)

Two plants — seniority rights confined to single plant; grievance dismissed. *Re Imperial Clevite Inc. & I.A.M.*, Loc. 1975; Bailey grievance, Feb. 2, 1984. R.J. Roberts — 7 pages. (132)†

#### Sick Leave

Pregnancy — maternity leave governed separately; no evidence of illness independent of pregnancy; grievance dismissed. *Re John Forsyth Company Ltd. & Western Ontario Joint Board, A.C.T.W.*, Loc. 303B; LaFrance grievance, Feb. 16, 1984. Devlin — 10 pages. (133)

#### Sick Pay

Calculation — disability benefits payable for regularly-scheduled days on which an employee is disabled, without reference to whether or not employee would have worked on that day but for the disability; grievance allowed. *Re John T. Hepburn Limited & International Molders and Allied Workers, Loc. 28; Apolito grievance*, Feb. 13, 1984. Swan — 10 pages. (134)

#### Technological Change

Introduction of new software to existing system — no technological change; grievance dismissed. *Re University of Toronto & C.U.P.E.*, Loc. 1230; union grievance, Jan. 31, 1984. Hinnegan — 9 pages. (135)

#### Transfer

Entitlement — restructuring of delivery routes for all employees held not to trigger the six-month time limit on applications for posted vacancies — incumbent selected not barred; grievance dismissed. *Re Coca-Cola Ltd. & Soft Drink Workers, Joint Local Executive Board; Priestman grievance*, Jan. 31, 1984. Springate — 15 pages. (136)

Teacher transferred to another school to meet program needs — procedural requirements met; seniority not relevant; grievance dismissed. *Re Lambton County Board of Education & Teachers employed by Lambton County Board of Education who are members of O.S.S.T.F.; Hawkes grievance*, Feb. 14, 1984. Majority: H. Brown, Riddell; dissent: Cazabon — 18 pages. (137)

Temporary transfer to lower-rated job — failure either to consider seniority or obtain agreement of union; grievance allowed. *Re Ivaco Rolling Mills & U.S.W.A.*, Loc. 7940; Demers grievance, Jan. 24, 1984. Roach — 12 pages. (138)

#### Union Officials

Super-seniority of union committeeman — restricted to protection from lay-off — not applicable to transfer from department he represented; grievances dismissed. *Re Fleet Industries, Division of Ronyx Corporation Ltd. & I.A.M.*, Frontier Lodge 171; Daley grievances, Feb. 25, 1984. Dunn — 5 pages. (139)

#### Union Rights

Remittance of dues and welfare plan premiums as required by collective agreement — company failing to remit; grievances allowed. *Re Puretex Canada Limited & Canadian Textile and Chemical Union; union policy grievances*, Feb. 9, 1984. McLaren — 14 pages. (140)†

#### Union Security

Non-remittance of dues — employer not attending at arbitration; company bankrupt; union proved dues collected from employees; grievance allowed. *Re Lembo Corporation of Canada Ltd. & Fuel, Bus, Limousine, Petroleum Drivers and Allied Workers, Loc. 352; union grievance*, Oct. 19, 1983. Egan — 4 pages. (141)†

#### Vacations

Calculation of vacation time — where leaves of absence exceed thirty days vacation allowed to be adjusted pro-rata; formula used altered; grievance allowed in part. *Re St. Mary's of the Lake Hospital, Kingston & St. Mary's of the Lake Employees (Service Group); policy grievance*, Feb. 14, 1984. Majority: O'Shea, Cancilla; dissent: Weir — 11 pages. (142)

Entitlement where grievor absent from active duty because of occupational injury — remains member of Association, covered by collective agreement; concept of "service" used to establish threshold dates for increases; grievor entitled to annual vacation with pay; grievance allowed. *Re Vanier Board of Commissioners of Police & Vanier Police Association; Lamoureux grievance*, Feb. 1, 1984. McLaren — 13 pages. (143)

Extra week scheduled by mistake; grievor not paid for extra work; grievance dismissed. *Re Scarborough Centenary Hospital & C.U.P.E.*, Loc. 1320; MacDonald grievance, Feb. 14, 1984. Brent — 4 pages. (144)

Scheduling — employer's policy changed to require all vacations to be taken between the months of June and September — employer failed to exercise its discretion reasonably to accommodate vacation requests for other months; grievance allowed. *Re Hotel-Dieu of St. Joseph's Hospital (Windsor) & O.N.A.; group grievance*, Jan. 9, 1984. Majority: Teplitsky, McIntyre; partial dissent: Burnell — 13 pages. (145)

#### Wages

Acting rate — recognition of true rate for job required; past practice also considered; grievance allowed. *Re Metropolitan Toronto Board of Commissioners of Police & Metropolitan Toronto Police Association; de Silva grievance*, Jan. 30, 1984. Adams — 13 pages. (146)

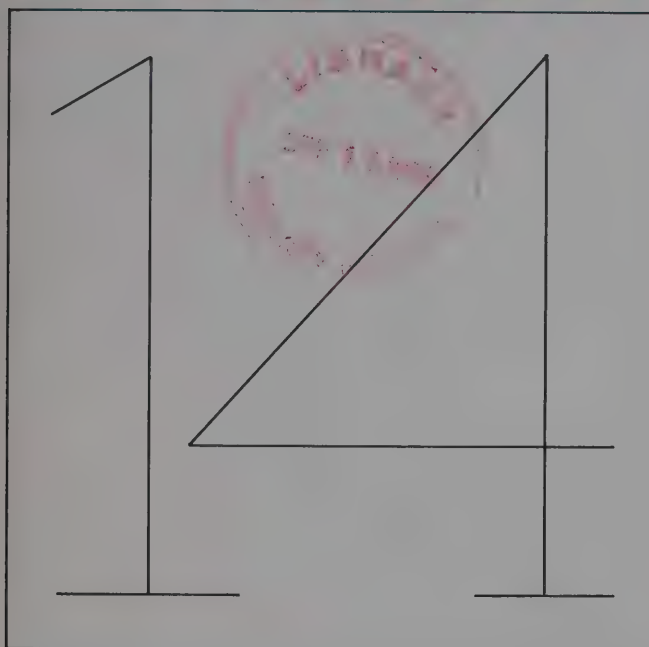
Service pay: grievor absent from active duty due to occupational injury — remains member of Association, covered by collective agreement; no qualifications on "service" — "service" used to establish threshold dates for increases — grievor entitled to service pay; grievance allowed. *Re Vanier Board of Commissioners of Police & Vanier Police Association; Lamoureux grievance*. See (143), *supra*. (147)

#### Work Assignment

Assignment of work of other bargaining unit alleged — employer did not direct her to perform other duties — grievor not qualified to do them; some functions did overlap; grievance dismissed. *Re Seneca College & O.P.S.E.U.; Massey grievance*, Feb. 6, 1984. Majority: Brent, Correll; dissent: Robbins — 7 pages. (148)

First-aid work now being performed by registered nurses — differences in skill level and actual work performed — not bargaining-unit work; grievance dismissed. *Re Inco Metals Co. & Canadian Guards Association, Loc. 105; union policy grievance*. See (4), *supra*. (149)

# Monthly Bulletin



Ontario Ministry of Labour



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Miss Jean M. Read, Director

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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1978, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of February and March, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Applicability of Bill 111 — arbitrator may determine if employees properly compensated under terms of collective agreement; grievance arbitrable. *Re Essex Nursing Home, Division of 538414 Ontario Ltd. & C.U.P.E., Loc. 1370-1; union grievance*, March 9, 1984. Hinnegan — 4 pages. (1)†

Discharge of casual employee — management right to discharge during probationary period not a bar; grievor may have heavier onus; grievance arbitrable. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43; Del Grande grievance*, March 12, 1984. Majority: Dunn, Tate; partial dissent: Milks — 8 pages. (2)

Discharge of probationary employee — no right to grieve discharge; grievance dismissed. *Re Irvin Industries Canada Limited & I.A.M., Loc. 989; policy grievance*, March 1, 1984. Samuels — 12 pages. (3)†



Grievor attempted to withdraw grievance — cannot make private agreements with company; collective agreement between union and company; union entitled to pursue grievance on behalf of grievor. *Re Fortune Footwear, Division of Susan Shoe Industries Limited & United Textile Workers, Loc. 369; Di Giandomaso grievance*, March 19, 1984. Black — 8 pages. (4)†

Inequitable teaching assignment — CIA committee found an overload and made recommendations, but was unable to decide on compensation; constituting a resolution; grievances not arbitrable. *Re Northern College of Applied Arts and Technology & O.P.S.E.U.; Wysocki and MacLean grievances*, Feb. 28, 1984. Majority: Brent, Shields; dissent: Taylor — 15 pages. (5)

No collective agreement in effect at the time that cause of grievance arose — claim for weekly indemnity benefits not arbitrable; grievance dismissed. *Re Gates Canada Inc. & United Rubber Workers, Loc. 733; Green grievance*, March 6, 1984. H. Brown — 10 pages. (6)

Parties agreed that hearing under s.45 be delayed — grievances not abandoned; s.45 application continued in effect; not withdrawn; no prejudice to company shown; grievance arbitrable. *Re Ivaco Rolling Mills & U.S.W.A., Loc. 7940; Lariviere, Lariviere, Crooke, Pageau and Cousineau grievances*, Feb. 1, 1984. Bernstein — 9 pages. (7)†

Policy grievance seeking only compensation — disputes for compensation by seasonal employees to be dealt with on individual basis; policy grievance dealing with all seasonal employees not proper; grievance not arbitrable; grievance also untimely. *Re Brantford Board of Park Management and Recreation Commission & Brantford Civic Employees, Loc. 181; policy grievance*, Feb. 28, 1984. Barton — 9 pages. (8)†

Probationary employee not specifically denied right to grieve — no violation of substantive right; grievance arbitrable. *Re Etobicoke General Hospital & O.N.A.; Burton grievance*, March 5, 1984. Majority: Jolliffe, Mayne; dissent: Brady — 31 pages. (9)

Time limits under s.45(7) of *Labour Relations Act*; first hearing adjourned by agreement of parties — company estopped from arguing time limits; alternatively arbitrator took jurisdiction when he arranged first adjournment; new date set. *Re Tricil Ltd. & I.U.O.E., Loc. 793; union grievance*, March 14, 1984. Lerner — 11 pages. (10)†

#### Bargaining Unit

Public Relations Coordinator position created; contract position — person an employee, not independent contractor; member of bargaining unit; grievance allowed. *Re Big Brothers Association of Ottawa and District & C.U.P.E., Loc. 1986; union grievance*, March 23, 1984. Carrothers — 9 pages. (11)†

Teachers at adult day schools fall within recognition clause — effect is to define scope of branch affiliates' bargaining rights; no failure to recognize rights established; grievance dismissed. *Re Ottawa Board of Education & Ontario Secondary School Teachers' Federation, District 26, L'Association des Enseignants Franco-Ontariens Unite Ottawa Secondaire; policy grievance*, March 21, 1984. Carter, Chados, Power — 75 pages. (12)

Work performed more consistent with bargaining-unit position — grievance allowed. *Re D.H. Foods (Marathon) & Retail Clerks, Loc. 409; policy grievance*, March 12, 1984. Phillips — 5 pages. (13)†

#### Bereavement Pay

Entitlement — leave based on calendar not working days; grievance dismissed. *Re Ottawa General Hospital & C.U.P.E., Loc. 1657; Page grievance*, March 15, 1984. Carrothers — 5 pages. (14)†

#### Call-in Pay

Entitlement — non-bargaining unit employees performing work which ought to have been assigned to bargaining unit employees on an overtime basis — union not obliged to accept offers of subsequent employment to affected employees; grievance allowed. *Re Ivaco Rolling Mills & U.S.W.A., Loc. 7940; grievance 83-12-R*, March 19, 1984. Weatherill — 8 pages. (15)\*

#### Classification

Error in placement on QECO salary grid alleged — established; grievances allowed. *Re Chapleau District Roman Catholic Separate School Board & Chapleau District Roman Catholic Separate School Board Teaching Staff; Ouellette and Brisson grievances*, Feb. 10, 1984. Bernstein, LaCroix, Venne — 9 pages. (16)

Functions substantially changed; less responsibility and complexity required — functions now performed fall within lower classification; grievance dismissed. *Re Sault College of Applied Arts and Technology & O.P.S.E.U. (Support Staff); Parent grievance*, March 26, 1984. Majority: Brunner, Courtney; dissent: Marszewski — 13 pages. (17)

Improper classification alleged — purported settlement of other employees' grievance not barring this grievance; employer may correct mistaken initial classification; grievance dismissed. *Re Catholic Children's Aid Society of Metropolitan Toronto & C.U.P.E., Loc. 2190; Moran grievance*, March 22, 1984. Kates, Carrier, Land; addendum: Land — 10 pages. (18)

Performance of higher job classification alleged — key duties of higher classification not performed; grievance dismissed. *Re Stearns and Foster Canada Ltd. & U.E., Loc. 513; Boutillier grievance*, March 15, 1984. Saltman — 6 pages. (19)†

Temporary move up — vague classifications — grievor not performing all duties of higher classification. *Re Shaver Hospital for Chest Diseases & C.U.P.E., Loc. 1742; Servos grievance*, March 12, 1984. Barton — 7 pages. (20)†

#### Collective Agreement

Agreement not signed by parties — not a valid collective agreement; grievance not arbitrable. *Re S & H Fabricating Canada Ltd. & United Brewery Workers, Loc. 304; policy grievance*, March 19, 1984. Egan — 5 pages. (21)

#### Contracting-out

Preference to be given to bargaining-unit employees during lay-off — grievor should have been recalled for at least one of shifts; grievance allowed, compensation for one shift ordered. *Re Ivaco Rolling Mills & U.S.W.A., Loc. 7940; Lariviere grievance*, Feb. 9, 1984. Bernstein — 6 pages. (22)†

#### Damages

Immunity from interest awards alleged — arbitrator given Part V *Labour Code* powers by bill establishing Canada Post Corporation — interest awardable on same basis as general arbitration; interest awarded; grievances allowed. *Re Canada Post Corporation & Letter Carriers Union; Robinson and Laidlaw grievances*, March 5, 1984. Kates — 14 pages. (23)

## Discharge

Absenteeism — automatic termination upon 20 months continuous absence — return to work for four and one-half hours sufficient to interrupt period of continuous absence; grievance allowed. *Re Certified Automotive Products (Central) Limited & U.S.W.A., Loc. 14831; Petroni grievance*, March 15, 1984. Kennedy — 8 pages. (24)

Absenteeism and failure to comply with agreed conditions of continued employment — alcoholism — grievor failing to cooperate and remain in treatment for rehabilitation; grievance dismissed. *Re Denison Mines Limited & U.S.W.A., Loc. 5762; Nephin grievance*, Feb. 17, 1984. O'Shea — 14 pages. (25)

Absenteeism — employer should have inquired about grievor's problems — grievor not beyond redemption; reinstatement without compensation. *Re Canada Post Corporation & Letter Carriers' Union; Riley grievance*, Feb. 27, 1984. Jolliffe — 25 pages. (26)

Absenteeism — history of absences to work in own business; grievor put on notice; no likelihood pattern will change; grievance dismissed. *Re Grace Meat Packers (York) Limited & U.F.C.W.U., Loc. 709-2P; Mantero grievance*, March 15, 1984. R.J. Roberts — 12 pages. (27)†

Absent for 3 days without notice — collective agreement penalty clause allowing for loss of seniority and termination — arbitrator has no jurisdiction to alter specifically enumerated penalty; grievance dismissed. *Re Burroughs Canada & U.A.W., Loc. 303; Richards grievance*, March 2, 1984. Weatherill — 6 pages. (28)

Absent without notice — grievor one day late following Christmas break, misunderstood starting date; clear language that any absence without notice cause for termination; grievance dismissed. *Re Fortune Footwear (Division of Susan Shoe Industries Ltd.) & United Textile Workers, Loc. 369; Hansen grievance*, March 26, 1984. Black — 8 pages. (29)†

Altercation with fellow employee — some physical force involved; poor past record; no mitigating factors; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Loc. 1005; Booth grievance*, March 5, 1984. Majority: McLaren, Storie; dissent: Marshall — 28 pages. (30)

Culminating incident — sleeping on job — safety hazard — progressive discipline applied — no grounds to mitigate penalty; grievance dismissed. *Re Inco Metals Company & U.S.W.A., Loc. 8126; Green grievance*, March 26, 1984. Majority: Kennedy, Kort; dissent: Mazur — 16 pages. (31)

Damage to company property while on picket line — good work record; five-month suspension substituted. *Re Ethyl Canada Inc. & E.C.W.U., Loc. 300; Acton grievance*, March 23, 1984. Welling — 15 pages. (32)†

Dishonest conduct: grievor's car used in theft — grievor not given opportunity to explain; employer does not satisfy onus; grievor reinstated with compensation. *Re Kaiser Aluminum and Chemicals of Canada Ltd. & U.S.W.A.; Clorey grievance*, March 16, 1984. Foisy — 11 pages. (33)†

Drinking on job — grievor made no effort at rehabilitation before discharge, but has since; conditional reinstatement without compensation. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Loc. 43; Osborne grievance*, March 22, 1984. Majority: Dunn, Tate; dissent: Milks — 12 pages. (34)

Inability to perform work of job to which grievor bumped during lay-off — no just cause; grievance allowed. *Re Dresser Canada Inc. Industrial Products Division & U.S.W.A., Loc. 5475; Bartley grievance*, March 20, 1984. H. Brown — 13 pages. (35)

Incompetence alleged — established, but grievor not warned that his work performance could lead to discharge — suspension and demotion substituted. *Re Leco Inc. & E.C.W.U., Loc. 819; Budaya grievance*, March 2, 1984. Black — 20 pages. (36)†

Insulting and offensive remarks — good past work record, 12 years seniority — progressive discipline to be applied; three and one-half month suspension without pay, no loss of seniority substituted. *Re McCallum Transport & Teamsters Loc. 938; Jebenville grievance*, Feb. 24, 1984. McCulloch, Tamblyn, Contardi — 11 pages. (37)

Leaving plant early at lunch without permission — previous discipline record extensive; grievance dismissed. *Re National Steel Car Ltd. & U.S.W.A., Loc. 7135; Briggs grievance*, March 16, 1984. Hinnegan — 9 pages. (38)†

Monthly rental for taxi plate in arrears — grievor warned that arrears not permitted — mitigating factors considered — grievor to pay amount in arrears and advance payment for a rental — grievor reinstated without compensation. *Re Best Taxi Limited, Member of the Ottawa Taxi Owners and Brokers Association & C.U.O.E., Loc. 111; McGoldrick grievance*, March 2, 1984. Roach — 37 pages. (39)†

Poor attitude, inappropriate behaviour — condoned — no corrective measures taken — reinstatement inappropriate — payment of six month's salary ordered. *Re Canadian Union of Operating Engineers and General Workers, Loc. 111 & Professional and Clerical Workers; Norton grievance*, Aug. 26, 1983. Bernstein — 35 pages. (40)

Possession of alcohol — facts established — not discrimination because of union activity or entrapment; reinstatement without compensation. *Re American Standard & U.S.W.A., Loc. 3589; Martin grievance*, March 19, 1984. Betcherman — 7 pages. (41)†

Probationary employee — failure to allow grievor to respond to appraisals alleged — not established — not allowed to expand original grievance to allege lack of regular appraisals; grievance dismissed. *Re Seneca College of Applied Arts and Technology & O.P.S.E.U.; O'Neill grievance*, Feb. 28, 1984. Majority: Brent, Beaudoin; dissent: Ziemba — 10 pages. (42)

Probationary employee — unsatisfactory work performance — grievor extended fair and reasonable opportunity to establish suitability — onus on union to establish contrary; grievance denied. *Re Ontario Hydro & Ontario Hydro Employees, Loc. 1000; McTaggart grievance*, March 22, 1984. Majority: Kates, Cancilla; dissent: McCullough — 19 pages. (43)

Quit alleged — not established; company entitled to argue alternative ground of discharge for just cause; interim award. *Re Willson Nursing Home & London and District Service Workers, Loc. 220; Vaughan grievance*, March 1, 1984. Gandz — 11 pages. (44)†

Smoking marijuana on company premises during working hours — company's treatment had been lenient — reinstatement on conditions. *Re Amoco Fabrics Limited & Amalgamated Clothing and Textile Workers, Loc. 1606; Bell and Hamilton grievances*, March 1, 1984. O'Shea, McDermott, Clark — 14 pages. (45)

Theft alleged — facts not proved; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Loc. 414; Hornby grievance*, March 2, 1984. Majority: Hinnegan, Dahmer; dissent: Blair — 10 pages. (46)



Union steward making false allegations about company doctor — grievor persisted even when he knew charge was false or did not care — s.80 of O.L.R.A. no bar to discipline; grievance dismissed. *Re Lever Detergents Ltd. & Chemical, Energy and Allied Workers, Loc. 132 (Teamsters); individual grievance*, Feb. 28, 1984. Schiff — 15 pages. (47)†

Urinating on loading dock — initial two-week suspension increased to discharge when grievor complained of severity — defect of not asking for remedy cured by s.44(9); two-week suspension substituted. *Re Guleph Beef Centre Inc. & U.F.C.W., Loc. 617P; Howard grievance*, Jan. 13, 1984. Majority: Teplitsky, Robbins; dissent: MacDermid — 8 pages. (48)

### Discipline

Failure to punch in-out at lunch break — three-day suspension — progressive discipline shown; grievance dismissed. *Re J.H. McNairn Ltd. & U.F.C.W.U., Loc. 233F; Van De Walker grievance*, March 7, 1984. Solomatenko — 12 pages. (49)†

Failure to report for overtime — grievor had duty to inquire whether change in work location cancelled overtime; duty to inform management of absence; four-day suspension upheld. *Re American Can Canada Inc. & U.F.C.W.U., Loc. 233-F; Daignault grievance*, March 9, 1984. Wilson — 6 pages. (50)†

Fighting at workplace; grievor given longer suspension than other employee — grievor's behaviour more threatening and harmful; grievance dismissed. *Re Somerville Belkin Industries Limited & London Commercial Printing Pressmen and Assistants Union, No. 510; Michielse grievance*, March 23, 1984. Majority: Saltman, Churchill-Smith; dissent: Lloyd — 13 pages. (51)

Horseplay — minor explosions as a prank; work record considered; grievances dismissed. *Re Stelco Inc. & U.S.W.A., Loc. 1005; Thornton and Broad grievances*, March 19, 1984. Lerner — 17 pages. (52)†

Insubordination; refused order to work; argued with supervisor over two minutes left in coffee break — poor past record — twenty-hour suspension upheld; grievance dismissed. *Re Leco Inc. & E.C.W.U., Loc. 819; Patel grievance*, March 19, 1984. Foisy — 11 pages. (53)†

Leaving work station: excessive time taken and frequency of washroom trips — not justified by medical condition — verbal warning; grievance dismissed. *Re Irvin Industries Limited & I.A.M., Loc. 989; Mills grievance*, Feb. 22, 1984. Houston — 7 pages. (54)†

Procedure: suspension imposed without the presence of union representative — right to presence of representative substantive not procedural — violation of substantive right renders suspension void *ab initio*; grievance allowed. *Re Canadian Union of Public Employees & Administrative and Technical Staff Union; Levine grievance*, March 1, 1984. Fraser — 20 pages. (55)

Record-keeping inadequate — public-health nurse should inform supervisor if work load too heavy; two-day suspension justified. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Husband grievance*, Feb. 29, 1984. Burkett — 20 pages. (56)

Wilful reduction of production — deliberate personal slowness alleged — not proved; grievance allowed. *Re National Steel Car Ltd. & U.S.W.A., Loc. 7135; Farrell grievance*, March 7, 1984. Palmer — 9 pages. (57)†

### Employment Status

Employer repeating six-month contracts in order to avoid grievor completing probationary period — no *bona fide* reason for practice; grievance allowed. *Re Ottawa, Corporation of City of, & Ottawa-Carleton Public Employees, Loc. 503; Tighe grievance*, March 13, 1984. Little — 24 pages. (58)\*†

### Estoppel

Application of doctrine in reference to representations made during negotiations — circumstances may support application — no clear and unequivocal representation established; grievance dismissed. *Re Brink's Canada Limited & Teamsters Loc. 419; policy grievance*, Feb. 29, 1984. Devlin — 34 pages. (59)†

Entitlement to sick-leave credit — union acquiesced to employer's method of allocating credit on anniversary date; grievance dismissed. *Re Owen Sound Board of Commissioners of Police & Owen Sound Police Association; Reid grievance*, March 16, 1984. M. Picher — 22 pages. (60)\*

### Grievance Procedure

Timeliness — probationary employee bound by time limits in collective agreement; time limits mandatory; employer would be prejudiced by extension of time limits; grievance not arbitrable. *Re Madame Vanier Children's Services & O.P.S.E.U.; Averill grievance*, Feb. 13, 1984. Majority: O'Shea, McManus; partial dissent: Farrar — 21 pages. (61)

### Holidays

Entitlement — employee forced to work holiday on scheduled day off — not entitled to another day off because job to cover slack time; grievance dismissed. *Re London Transit Commission & A.T.U., Div. 741; Blackport grievance*, March 15, 1984. McLaren — 9 pages. (62)†

### Holiday Pay

Part-time nurses entitled to one and one-half times their regular straight-time hourly rate, plus overtime — hospital must act reasonably in scheduling holidays and fixing time for payment — nurse working extended tours entitled to seven and one-half hours holiday pay and lieu days — nurse sick on holiday otherwise scheduled to work entitled to sick pay; not lieu day; interim award. *Re Participating Hospitals & O.N.A.; policy grievances*, March 7, 1984. Majority: Shime, Winkler; dissent: Paliare — 66 pages. (63)

Employment relationship terminated before date of holiday — no entitlement. *Re C.I.P. Inc. & Canadian Paperworkers; union grievance*, March 2, 1984. Majority: Kates; dissents in part: Oliver, Brunette — 25 pages. (64)

Qualifying days — no intention to impose stricter qualifications on employee absent through illness; grievance allowed. *Re Fortune Footwear, Division of Susan Shoe Industries Ltd. & United Textile Workers, Loc. 369; Di Giandomaso grievance*. See (4), *supra*. (65)†

### Hours of Work

Hours of work per week reduced for one shift of maids — no guarantee of hours or requirement to lay-off — grievors given opportunity to bump to shift retaining full hours and refused; grievance dismissed. *Re Royal York Hotel (Canadian Pacific Hotels Limited) & Hotel, Restaurant and Cafeteria Employees, Loc. 75; policy grievance*, March 19, 1984. Majority: Weatherill, Haunts; dissent: Tate — 7 pages. (66)

### Illness

Fitness to return to work — limitations proposed by physician not severe enough to interfere with job performance or grievor's health; grievor declared fit. *Re Elan Tool and Die & U.A.W., Loc. 127; Bechard grievance*, March 1, 1984. Brent — 5 pages. (67)

**Job Posting**

Lead-hand position — not a separate classification — posting not required; grievance dismissed. *Re Brydon Division, ITT Industries of Canada Ltd. & U.S.W.A., Loc. 3950; union policy grievance*, March 15, 1984. Lerner — 11 pages. (68)†

Lead-hand positions not required to be posted — a specialist position separately classified is not, by definition, a lead hand; grievance allowed. *Re Domglas Inc. (Brampton) & United Glass and Ceramic Workers, Loc. 260; union policy grievance*, Feb. 27, 1984. Majority: McLaren, Ferguson; dissent: Hetz — 10 pages. (69)

Qualifications — grievor lacked basic skill of classification — trial period for purpose of familiarization not to permit unqualified employee to become qualified; grievance dismissed. *Re St. Catharines General Hospital & S.E.U., Loc. 204; McLean grievance*, Jan. 30, 1984. Teplitsky, Storie, Beaulieu — 10 pages. (70)\*

Refusal to take written test — employee temporarily performing work not considered previously classified at higher position — to be eligible must properly apply; grievance dismissed. *Re Carrier Canada & Sheet Metal Workers, Loc. 575; Howard grievance*, March 12, 1984. Hunter — 10 pages. (71)†

Selection process not disciplinary, arbitrary or unfair; grievance dismissed. *Re North York Board of Education & Ontario Secondary School Teachers' Federation, District 13, North York; Newall grievance*, Feb. 29, 1984. Shime, Riddell, Smith — 3 pages. (72)

**Lay-off**

Bumping rights — grievors seeking to bump junior employees in higher classification — grievors not able or qualified for the work; grievances dismissed. *Re Chubb Fire Security & U.S.W.A., Loc. 6761; Campbell and Goba grievances*, Feb. 15, 1984. Majority: O'Shea, Addario; dissent: Mills — 11 pages. (73)

Employer offered opportunity to work in another department during lay-off — no obligation to do so — employer withdrew intended action — potential breach avoided; grievance dismissed. *Re Ottawa Roman Catholic Separate School Board & Service and Commercial Employees, Loc. 272; union grievance*, March 12, 1984. Hinnegan, Dunn, Read — 6 pages. (74)

Extent of bumping rights — language of agreement indicating lay-off by bargaining-unit-wide, not classification-wide seniority; interim award. *Re H.J. McFarland Memorial Home & S.E.U., Loc. 183; policy, group and Swoffer grievances*, Feb. 29, 1984. Solomatenko — 15 pages. (75)\*†

Extent of bumping rights — multiple bumping not contemplated; termination in surplus situations provided for; employer acted reasonably; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees, Loc. 1000; Michalek grievance*, March 9, 1984. Majority: Adams, Abbott; dissent: McCullough — 28 pages. (76)

Former member moved back into bargaining unit — may exercise full seniority rights to bump any junior employee if capable of performing job — sets off bumping chain; grievance dismissed. *Re Raybestos Canada Inc. & U.S.W.A., Loc. 5141; Brooks grievance*, March 16, 1984. Emrich — 12 pages. (77)†

Qualifications — inadequate training resulting in lack of qualifications — during previous learning period grievor not trained on a key element of job; grievor not qualified; grievance dismissed. *Re Foster Wheeler Ltd. & U.S.W.A., Loc. 6519; Burke grievance*, March 6, 1984. Brunner — 10 pages. (78)

Qualifications — senior employee bumping — unable to perform job — laid-off — ability to perform not proved; grievance dismissed. *Re Atlantic Packaging Brampton/Brock Containers & International Woodworkers, Loc. 2-112; Incorvaja grievance*, March 13, 1984. Baum — 13 pages. (79)†

Reduction in patients necessitating lay-off — hospital failed to give consideration to grievors' request to bump into other classifications; interim award. *Re LaVerendrye General Hospital & LaVerendrye Hospital Employees, Loc. 795, C.U.P.E.; group grievance*, March 14, 1984. O'Shea — 18 pages. (80)

Reduction of hours — work week of all employees not reduced equally or in light of seniority; grievance allowed in part; compensation ordered. *Re Canadian Union of Operating Engineers and General Workers, Local 111 & Professional and Clerical Workers; Norton grievance*, Aug. 16, 1983. Bernstein — 25 pages. (81)†

Reduction of hours of work of only some employees — constituting lay-off; employees working shorter shift to be compensated for one hour's pay for each day worked. *Re Ontario Banknote Ltd. & Toronto Typographical Union, No. 91; Paris grievance*, March 4, 1984. Egan — 10 pages. (82)

Reorganization — lay-off of grievor not a result of retention of one "floater" following reorganization of service areas but from the reorganization which company entitled to effect; grievance dismissed. *Re Liquiflame Services, Division of Ultramar Canada Inc. & Fuel, Oil & Natural Gas Service Technicians Association; Miller grievance*, March 13, 1984. Black — 12 pages. (83)

Work assigned to less-senior employee during lay-off — grievor qualified; grievance allowed. *Re Secord Manufacturing Ltd. & U.S.W.A., Loc. 8483; Adams grievance*, March 8, 1984. Samuels — 6 pages. (84)†

**Leave of Absence**

Educational leave — leave not restricted to upgrading of qualifications; courses would assist nurses in performance of duties; grievances allowed, grievors to be compensated in amount equal to what they would have been paid had leave been granted. *Re Victoria Hospital Corporation & O.N.A.; Buckland-Foster and Lord grievances*, March 7, 1984. Majority: Brent, Symes; addendum: Winkler — 14 pages. (85)

**Management Rights**

Requirement to supply car as a condition of employment — customary use does not make car a job requirement; grievance allowed. *Re Kingston, Corporation of Township of, & C.U.P.E., Loc. 1850; policy grievance*, Nov. 1, 1983. Bernstein — 7 pages. (86)†

Right to lay-off — restrictions on this right must be found in language of collective agreement; requirement of legitimate business purpose. *Re Toronto East General Hospital & S.E.U., Loc. 204; group grievance*, March 9, 1984. Majority: Burkett, Belford; addendum: Lewis — 30 pages. (87)\*

Rules for reporting absence: reasonableness of requirement to phone in four hours before shift — rules not inconsistent with agreement or statute; grievance dismissed. *Re York-Finch General Hospital & C.U.O.E.; union policy grievance*, March 13, 1984. Kirkwood — 11 pages. (88)†



**Mistake**

Union erroneously believed that grievor not a company employee: did not negotiate inclusion into bargaining unit as temporary employee — company's silence did not mislead union; company not obliged to correct wrong assumption — grievor not covered by collective agreement; grievance dismissed. *Re Maple Leaf Monarch Company & Windsor Grain Processors Union, Loc. 1; Saric grievance*, March 5, 1984. Gorsky — 13 pages. (89)\*

**Overtime**

Distribution — overtime offered to non-bargaining-unit employees before union employees on previous shift — conflicting provisions create an ambiguity resolved by past practice; grievance dismissed. *Re Consumers Distributing Company Ltd. & Teamsters Loc. 419; union policy grievance*, Feb. 28, 1984. Devlin — 15 pages. (90)†

Distribution — substantial work in department required — overtime to be given on departmental basis; no equalization between classifications; grievance allowed, compensation ordered. *Re Inglis Limited & U.S.W.A., Loc. 2900; Sasmaz grievance*, March 16, 1984. Foisy — 9 pages. (91)†

Part-time workers hired to reduce overtime — parties agreed that additional work required first be offered to eligible employees; grievance allowed, employees to be compensated for lost wages and benefits. *Re Brampton, Corporation of City of, & A.T.U., Loc. 1573; policy grievance*, March 6, 1984. Davis — 9 pages. (92)†

Rescheduling of employees rather than assignment of overtime — provisions for overtime distribution when "absences on shift" — only applicable when overtime assigned; grievances dismissed. *Re E.B. Eddy Forest Products Ltd. & I.B.E.W., Loc. 956; Kennedy and Burns grievances*, March 15, 1984. Solomatenko — 9 pages. (93)†

Work performed by employee in other classification on regular time — overtime distribution provisions not applicable; grievance dismissed. *Re Fiberglas Canada Inc. & E.C.W.U., Loc. 914; Horvath grievance*, March 28, 1984. Weatherill — 7 pages. (94)

**Overtime Pay**

Entitlement not established — no clear and unequivocal representation supporting entitlement made at contract negotiations as alleged; grievance dismissed. *Re Brink's Canada Limited & Teamsters, Loc. 419; policy grievance*. See (59), *supra*. (95)†

Part-time employee working "unscheduled" day — part-timers not considered regularly scheduled; used to fill vacancies; grievance dismissed. *Re Timmins Home for the Aged (Corporation of City of Timmins) & C.U.P.E., Loc. 1140; Woodrow grievance*, March 22, 1984. Sheppard — 10 pages. (96)†

**Premium Pay**

Eligible hours for premium pay — overtime hours worked during the week part of calculating forty-hour work week — hours in excess of forty, overtime; grievance allowed. *Re Firestone Steel Products & U.A.W., Loc. 27; Bennett grievance*, March 7, 1984. Weatherill — 9 pages. (97)

Weekend work — acceptance of full-time position not constituting a hiring for specific purpose of weekend employment; grievance allowed. *Re Carefree Lodge & O.N.A.; Brewster grievance*, March 21, 1984. Majority: Satterfield, Symes; dissent: Wilson — 24 pages. (98)

**Probationary Employee**

Employer and union agreed to extend grievor's probationary period without her consent — union had obligation to notify grievor of alteration to terms of employment — union cannot claim nullity of agreement due to its failure to discharge its obligation; grievance dismissed. *Re Smith and Stone (1982) Inc. & U.A.W., Loc. 1421; Hall, policy grievance*, March 8, 1984. Brandt — 14 pages. (99)

Employer announced intention to terminate at end of probationary period but grievor not terminated until after completion of final shift of probationary period — probationary period elapsed — grievor obtained seniority status — employer must establish just cause for discharge; grievance arbitrable. *Re Madame Vanier Children's Services & O.P.S.E.U.; Averill grievance*. See (61), *supra*. (100)

Part-time employee posting into full-time position — not considered a probationary employee, part-time seniority to be transferred and calculated as full-time; grievance allowed. *Re Sudbury District Association for the Mentally Retarded & C.U.P.E., Loc. 2599; Daoust grievance*, March 13, 1984. Egan — 11 pages. (101)\*†

Termination of probationary teacher — qualified as "unassigned teacher" and therefore eligible for severance pay; grievance allowed. *Re Cochrane-Iroquois Falls Board of Education & Branch Affiliates of the O.S.S.T.F. and Secondary School A.E.F.O. Members; Desrosiers grievance*, March 23, 1984. Majority: Weatherill, Charron; dissent: Papineau — 12 pages. (102)

**Procedure**

Stay of proceedings: indefinite suspension grievance — discharge arbitration for same grievor on same circumstances had already begun to hear merits; danger of inconsistent rulings; stay granted. *Re Margaret's Fine Foods Ltd. & Milk and Bread Drivers, Loc. 647 (Teamsters); Ateshin grievance*, Feb. 27, 1984. Wilson — 5 pages. (103)†

Subpoena *duces tecum* — subpoena not a search warrant, to be used judiciously, not abused; relevant information within knowledge of employer, satisfactory position worked out between parties at hearing; subpoena amended; interim award. *Re Toronto East General Hospital & S.E.U., Loc. 204; group grievance*. See (87), *supra*. (104)\*

Union failing to notify third parties that might be affected — failure to notify not fatal to grievance; adjourned to enable notification. *Re Tricil Ltd. & I.U.O.E., Loc. 793; union grievance*. See (10), *supra*. (105)†

**Promotion**

Entitlement — in absence of full-time applicants, grievor as qualified member of part-time bargaining unit entitled to preference over non-bargaining-unit personnel; grievances allowed. *Re Port Perry Community Memorial Hospital & O.N.A.; grievances 83/196 and 83/197*; Feb. 29, 1984. Majority: Teplitsky, Symes; dissent: Winkler — 20 pages. (106)

Qualifications — employer entitled to refuse to grant grievor an interview for position based on his failure to meet posted educational qualifications; grievance dismissed. *Re Metropolitan Toronto Association for the Mentally Retarded & C.U.P.E., Loc. 2191; Graham grievance*, March 2, 1984. Barrett — 9 pages. (107)†

Qualifications — grievor lacking requisite skill, knowledge, competence and ability; grievance dismissed. *Re Domglas Inc. & United Glass and Ceramic Workers, Loc. 260; Vaid grievance*, March 9, 1984. Brunner — 8 pages. (108)

Qualifications — grievor lacking skill to do statistical analysis and requisite interpretation of data; grievance dis-

missed. *Re Standard Induction Castings Limited & U.A.W., Loc. 195; Taylor grievance*, March 15, 1984. Samuels — 12 pages. (109)

Qualifications — lack of adequate training given, conduct of trial period unfair; grievor given another opportunity to prove ability. *Re Domtar Inc., Domtar Construction Materials/Gypsum Products, Caledonia & U.S.W.A., Loc. 14994; Legere grievance*, March 6, 1984. Lerner — 11 pages. (110)†

Sale of a business — memorandum of agreement setting out rights of all employees during transition period — grievor has no right to promotion to newly-purchased store; grievance dismissed. *Re Great Atlantic and Pacific Company of Canada Ltd. & U.F.C.W., Locs. 175 & 633; Moriss grievance*, March 21, 1984. Majority: Saltman, Baldwin; dissent: Walsh — 7 pages. (111)

Temporary — company obligated to give preference to senior employees to extent permitted by requirements of operations — no exception established; grievance allowed. *Re Inco Limited & U.S.W.A., Loc. 6500; Schofield grievance*, March 6, 1984. Majority: Shime, Gerard; dissent: Kort — 7 pages. (112)

#### Retirement

Retirement policy not mandatory; grievor not told of decision to retire her at 65 — grievor not treated fairly, reasonably or consistently — employer gave no reason; grievance allowed, reinstatement and compensation ordered. *Re La Residence St. Louis & I.U.O.E., Loc. 796; Henry grievance*, undated. Bernstein — 9 pages. (113)†

#### Seniority

Non-bargaining-unit personnel — seniority considered a bargaining-unit concept; no intent to credit seniority where change from casual to part-time status but credit to be given for service. *Re Participating Hospitals & O.N.A.; policy grievance*, March 7, 1984. Majority: Shime; partial dissent: Paliare; dissent: Winkler — 30 pages. (114)\*

#### Sick Pay

Calculation of sick-pay credits upon termination — past practice establishes "day" equal to annual salary divided by shifts worked (260), union failed to negotiate change in wording — previous arbitration supports employer position; union assertion that it would file grievance does not alter interpretation — union not merely seeking clarification; grievance dismissed. *Re North York, Corporation of City of, & North York Fire Fighters Association; Moore grievance*, March 8, 1984. Burkett — 24 pages. (115)

Entitlement — not established on evidence; grievance dismissed. *Re Molson's Brewery (Ontario) Limited & United Brewery Workers, Loc. 306; Kenny grievance*, March 7, 1984. Brandt — 9 pages. (116)

#### Transfer

Change in job duties within a classification not constituting transfer as alleged — no requirement that seniority govern assignment of job duties; grievance dismissed. *Re Irvin Industries Canada Limited & I.A.M., Loc. 989; Anthony grievance*, Feb. 24, 1984. Houston — 7 pages. (117)†

Entitlement — company did not "endeavour to accommodate" grievor's request for transfer as required — denial unjustifiable; grievance allowed. *Re Dominion Stores Limited & U.S.W.A., Locs. 14045 & 14974; Vachon grievance*, March 8, 1984. Saltman — 14 pages. (118)

Less-senior employee transferred to higher-paying job — grievor qualified, no distinction between permanent and temporary transfers; grievance allowed. *Re Irvin Industries Ltd. & I.A.M., Loc. 989; Willmore grievance*, March 9, 1984. Lerner — 5 pages. (119)†

#### Travel Allowance

Retraining programme — retraining necessary or grievors subject to lay-off — employees requesting retraining in face of lay-off entitled to same allowances as if sent to re-training by employer; grievances allowed. *Re CNCP Telecommunications & Canadian Association of Communications and Allied Workers; Mallenfant and Morash grievances*, Nov. 21, 1983. Majority: Lunney, Beaulieu; dissent: Milley — 13 pages. (120)

#### Union Officials

Rate of pay while union Health and Welfare chairman — grievor to be paid higher rate; grievance allowed. *Re Firestone Canada Inc. (Hamilton Plant) & United Rubber Workers, Loc. 113; Cheeseman grievance*, March 23, 1984. Solomatenko — 13 pages. (121)†

#### Union Rights

Failure by company to make requisite payments into fund — liability admitted in minutes of settlement; grievance allowed on terms agreed. *Re Vac Services, Division of 464555 Ontario Limited & International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Loc. 128; policy grievance*, Feb. 29, 1984. Lerner — 7 pages. (122)†

Use of hospital premises for Association meetings — past practice of free access estops employer from charging for meeting held before notice given, refusal of access to traditional hall is discriminatory; grievance allowed in part. *Re Toronto General Hospital & O.N.A.; Association policy grievance*, Feb. 15, 1984. Majority: Carter, Coupey; partial dissent: Robbins — 11 pages. (123)\*

#### Vacations

Calculation for retired employees — not in position of being absent without pay during period following retirement, vacation entitlement ceases following commencement of pension date; grievance dismissed. *Re Northern Telecom Canada Limited & U.A.W., Loc. 1839; policy grievance*, March 5, 1984. Weatherill — 16 pages. (124)

Entitlement — seniority and eligible time for calculating vacation entitlement not broken because employee on authorized sick leave — time on leave to be included in service; grievance allowed. *Re Lenadco Home for Aged & C.U.P.E., Loc. 3014; Hubble grievance*, Feb. 10, 1984. Bernstein — 5 pages. (125)†

#### Vacation Pay

Calculation of allowable time — plant closed — vacation eligibility calculated on same basis as those eligible to retire; grievance allowed in part. *Re C.I.P. Inc. & Canadian Paperworkers; union grievance*. See (64), *supra*. (126)

Calculation — "total wages earned" interpreted to include prior vacation payments in calculation of current vacation-pay entitlement; grievance allowed. *Re Scarborough Centenary Hospital Association & O.P.S.E.U., Loc. 574; Smith grievance*, Feb. 29, 1984. Majority: H. Brown, Switzman; dissent: Cancilla — 14 pages. (127)\*

Entitlement for period on lay-off — "on active payroll" refers to entitlement date, as clarified by past practice; grievance allowed. *Re Samuel, Son & Co. Ltd. & U.S.W.A., Loc. 6398; group grievance*, Feb. 27, 1984. Barton — 10 pages. (128)†

Entitlement — prorated because grievor on approved unpaid leave of absence for work-related injury; grievance dismissed. *Re Northwestern General Hospital & S.E.U., Loc. 204; Pereira grievance*, Feb. 21, 1984. Majority: Adams, Mustard; dissent: Lewis — 10 pages. (129)



**Wages**

Incentive pay — company bound to continue plan notwithstanding that plan no longer provided lower costs or that level of work ceased to be measurable during shutdown; grievance allowed. *Re Atlas Steels, Division of Rio Algom Limited & Canadian Steel Workers; policy grievance*, March 9, 1984. Brunner — 11 pages. (130)

Calculation: method of calculation changed — postponement of small portion of salary until after end of contract year does not violate collective agreement; grievance dismissed. *Re Georgian College & O.P.S.E.U.; Wolfe grievance*, Feb. 21, 1984. Brent, Shields, Traves — 10 pages. (131)

Jury duty — grievors on afternoon shift have minimal jury duty during day — jury pay provision not restrictive; grievors entitled to full pay without working regular shift. *Re Monarch Fine Foods Co. Ltd. & Milk and Bread Drivers, Loc. 647; Parry, Gogna and Dyal grievance*, Feb. 10, 1984. Devlin — 11 pages. (132)†

New classification established — considerable skill and experience required to operate new machine; manning reduction reflected by technological change; evidence establishes equality with highest classification. *Re Mutual Press Limited & Ottawa Printing and Graphic Communications Union, Loc. N62; consensual arbitration*, Feb. 20, 1984. McLaren, LeBlanc, Kearney — 11 pages. (133)

Transfer to lower-rated jobs because of lack of work — lower rate of pay governing; grievances dismissed. *Re MacMillan-Bathurst Inc. & International Woodworkers, Loc. 2-76; Keats and Lawry grievances*, Feb. 3, 1984. O'Shea — 11 pages. (134)

**Welfare Plans**

Benefits under sickness and accident plan — grievor entitled to negotiated increase in benefits although absent from work due to illness at time of negotiated increase; grievance allowed. *Re Spar Aerospace Limited & U.A.W., Loc. 112; Mitchell grievance*, March 6, 1984. Black — 10 pages. (135)†

Dental plan — company alleged to have violated collective agreement by failing to purchase a plan which provides coverage at current ODA fee schedule; no requirement established; grievance dismissed. *Re Woodbridge Foam Corporation & Amalgamated Clothing and Textile Workers, Loc. 1438; policy grievance*, Feb. 15, 1984. Majority: Brandt, Churchill-Smith; dissent: Mallett — 12 pages. (136)

Dental plan: level of benefits — provisions is ambiguous — no change negotiated from previous agreement which left benefits at 1981 level; grievance dismissed. *Re Falconbridge Ltd. & Sudbury Mine, Mill and Smelter Workers, Loc. 598; union grievance*, Feb. 23, 1984. Teplitsky — 5 pages. (137)

Long-term disability and weekly indemnity plans — employee on lay-off who elects to take vacation entitlement not eligible for reinstatement of coverage until employee returns to work. *Re CIP Inc. (Container Division) & Canadian Paperworkers, Loc. 949; Curtis grievance*, Feb. 7, 1984. Springate — 14 pages. (138)

Payment of premiums while on long-term disability — grievor held to be still an "employee" — no ambiguity so as to admit evidence of past practice — such premiums are not part of "salary"; grievance allowed. *Re Nipissing Board of Education & C.U.P.E., Loc. 1165; Legault grievance*, Jan. 26, 1984. Lunney — 13 pages. (139)

**Work Assignment**

Employee performing part of grievor's job on grievor's off day; employee did not perform work during grievor's scheduled shift; work was not in addition to employee's own four-day work week — job functions overlap; grievance dismissed. *Re Burlington Steel, Division of Slater Steel Industries Ltd. & U.S.W.A., Loc. 4752; Morrison grievance*, Feb. 13, 1984. Brunner — 7 pages. (140)

Employee performing part of grievor's job on grievor's day off — employee does not normally perform those duties although they are within his classification; management right to assign work within classification; employee did not perform work beyond four-day work week; grievance dismissed. *Re Burlington Steel, Division of Slater Steel Industries Ltd. & U.S.W.A., Loc. 4752; Piper grievance*, Feb. 13, 1984. Brunner — 5 pages. (141)

Failure to fill temporary vacancy — not contrary to safe operation of plant; grievor cannot insist on performing double shift; grievance dismissed. *Re Great Lakes Forest Products Limited & Canadian Paperworkers, Loc. 39; Fucile grievance*, Feb. 6, 1984. Majority: O'Shea, Holt; dissent: Stencer — 16 pages. (142)

Qualifications — grievor not as suitable as other employee called in to do the requisite work; grievance dismissed. *Re Hudson's Bay Company & Retail Clerks Union, Loc. 409; Broeren grievance*, Feb. 8, 1984. Majority: R.J. Roberts, Piercy; dissent: Johnson — 10 pages. (143)

Staffing requirements — no obligation on employer to hire full-time librarian as alleged; grievance dismissed. *Re Huron County Board of Education & O.S.S.T.F., Dist. 45; policy grievance*, Feb. 3, 1984. Majority: Barton, Riddell; dissent: McLean — 16 pages. (144)

Substantial overlap in job functions of registered nurse and registered nursing assistant — no violation of collective agreement to assign R.N. to perform duties; grievances dismissed. *Re Mattawa General Hospital & C.U.P.E., Loc. 1465; policy grievance*, Jan. 4, 1984. Majority: Rayner, Storie; dissent: Neeley — 10 pages. (145)

Subway workers denied work on surface construction — despite practice of keeping workers separate, agreement only contained one classification; seniority for assignment based on entire classification; grievance allowed. *Re Toronto Transit Commission & C.U.P.E., Loc. 2; policy grievance*, Feb. 24, 1984. Foisy — 16 pages. (146)

Supervisor performing bargaining-unit work; grievance allowed. *Re Rio Algom Limited & U.S.W.A., Loc. 5417; Therriault grievance*, Jan. 27, 1984. O'Shea — 10 pages. (147)

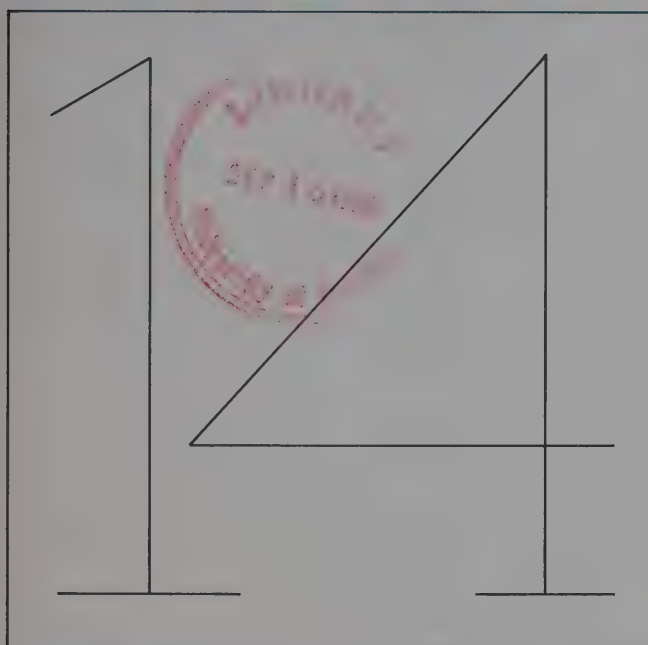
Temporary vacancy — company erred in failing to assign work in temporary vacancy to most senior qualified employee; grievance allowed. *Re Labatt's Ontario Breweries & United Brewery Workers, Loc. 304; union grievance*, Feb. 9, 1984. Weatherill — 8 pages. (148)

Temporary vacancy — company obligated to fill by assigning senior qualified employee on shift and in unit where vacancy occurs, grievor denied opportunity; grievance allowed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Augustini grievance*, Feb. 17, 1984. Majority: McLaren, Marshall; dissent: Moran — 21 pages. (149)

Work on "off-shift" — senior employees working short work week entitled to work on "off-shift"; grievance allowed. *Re Flamingo Pastries Limited & Teamsters Loc. L-647; Gill grievance*, Feb. 22, 1984. Egan — 7 pages. (150)

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# Monthly Bulletin



Ontario Ministry of Labour



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Office of Arbitration as a service to  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1979, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Ontario Labour-Management Arbitrators Association

The Ontario Labour-Management Arbitrators Association has announced the introduction of a voluntary account mediation service to resolve disputes arising from arbitrators' accounts in cases where the arbitrator has been appointed by the Minister of Labour pursuant to sections 44 or 45 of *The Labour Relations Act*.

The Association has appointed an administrator, Mr. P. John Brunner, to deal with complaints received. For further information, please contact Mr. Brunner at the following address: The Administrator, Ontario Labour-Management Arbitrators Association, 111 Richmond Street West, Suite 600, Toronto, Ontario, M5H 2H5, telephone (416) 364-2121.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of March and April, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.



**Arbitrability**

Identical grievance as to publication of instructional assignments previously abandoned — no jurisdiction; grievance not arbitrable. *Re Fanshawe College & O.P.S.E.U.; policy grievance*, March 27, 1984. Majority: H. Brown, Hubert; dissent: Beaulieu — 17 pages. (1)

Section 45 — reference to arbitration untimely under collective agreement; grievance dismissed. *Re Burns Meats Ltd. (Kitchener) & U.F.C.W.U.; preliminary objection*, April 17, 1984. Black — 8 pages. (2)†

Settlement — withdrawal of grievor's consent not relevant; grievance not arbitrable. *Re Gulf Canada Products Co., Clarkson Refinery, & E.C.W.U., Loc. 593; Slugen grievance*, April 16, 1984. Saltman — 5 pages. (3)

Settlement of previous grievance; union alleges settlement violates terms of collective agreement — arbitrator limited to determining whether company has abided by terms of settlement; interim award. *Re Zehrs Markets & Retail Clerks Union, Loc. 1977; Duskocy grievance*, April 10, 1984. Barton — 5 pages. (4)\*†

**Bargaining Unit**

Promotion of employee to foreman alleged — similar tasks performed — no exercise of direction or control over some part of regular working force; grievance allowed. *Re Woollatt Building Materials Ltd. & Labourers Loc. 1059; union grievance*, April 17, 1984. Samuels, Walsh, Humphrey — 11 pages. (5)

**Bereavement Leave**

Coincident with vacation — agreement providing compensation for "scheduled hours" only — no entitlement; grievance dismissed. *Re Peterborough Civic Hospital & O.N.A.; Martin grievance*, April 13, 1984. Majority: Kates, Winkler; dissent: McIntyre — 10 pages. (6)

**Board of Arbitration**

Extent of remedial power — board not having jurisdiction to grant relief based on prior agreements — extent of relief only going to commencement of present agreement; grievance dismissed. *Re Parkwood Hospital & O.N.A.; Mapes grievance*, April 11, 1984. Majority: Weatherill, Heffernan; dissent: Grant — 14 pages. (7)\*

Appointment of chairman — employer withdrawing consent prior to appointment; grievances not arbitrable; interim award. *Re Sunbeam Home & London and District Service Workers, Loc. 220; Smith and Mulligan-Newton grievances*, April 13, 1984. Majority: Saltman, Laing; dissent: Solberg — 8 pages. (8)

**Classification**

Duties including those formerly performed by higher classification alleged — failure to show critical analysis aspect of former job performed; grievance dismissed. *Re Toronto Public Library Board & C.U.P.E., Loc. 1996; Hogan (Pratt) grievance*, March 19, 1984. Majority: O'Shea, McCormack; dissent: Richardson — 17 pages. (9)

Higher classification sought — significant change in job functions and responsibility — comparison with other job rates not determinative where classification system admittedly inadequate; grievance allowed in part. *Re Ottawa-Carleton, Regional Municipality of, & Ottawa-Carleton Public Employees, Loc. 503; Jurek grievance*, March 5, 1984. Majority: Lyon, Switzman; addendum: Switzman; dissent: Hallman — 15 pages. (10)

Improper ranking alleged — added duties involving more responsibility, ingenuity and responsibility for the safety

of others; job to be assigned higher rank, employees to be compensated for lost wages and benefits; grievance allowed. *Re Wabco Ltd. & U.E., Loc. 558; policy grievance*, April 5, 1984. Davis — 22 pages. (11)†

Improper ranking alleged — job a combination of jobs previously ranked at same level; additional value points added for mental and visual demands does not result in change to rank assigned; grievance dismissed. *Re Wabco Ltd. & U.E., Loc. 558; policy grievance*. See (11), *supra*. (12)†

Improper ranking alleged — job changed from numerically controlled operation to computer controlled operation; actual experience required not proved to exceed job rank; grievance dismissed. *Re Wabco Ltd. & U.E., Loc. 558; policy grievance*. See (11, 12), *supra*. (13)†

Technological change — job not substantially or materially changed nor does it fit squarely within the classification sought; grievance dismissed. *Re Scarborough Public Utilities Commission & Utility Workers, Loc. 1; Ivan grievance*, April 3, 1984. Majority: Brent, Gray; dissent: Nairn — 13 pages. (14)

Work performed identical but grievor not professionally qualified — wages increased but classification not changed. *Re Salvation Army Grace Hospital & O.P.S.E.U., Loc. 142; Cramp grievance*, April 16, 1984. Majority: Samuels, Beaulieu; dissent: Burnell — 31 pages. (15)

**Collective Agreement**

Letter of understanding re downward classification and red-circling of grievors — constitutes part of collective agreement "without prejudice" provision refers to future situations; employer objection to classification grievances upheld. *Re Northwestern General Hospital & O.P.S.E.U., Loc. 564; Lyon et al grievances*, April 11, 1984. Samuels, Mustard, Beaulieu — 6 pages. (16)

**Damages**

Compensation upon order of reinstatement — absenteeism taken into account; supplementary award. *Re Sudbury, Corporation of City of, & C.U.P.E., Loc. 1662; Douglas grievance*, April 19, 1984. Knopf — 6 pages. (17)†

**Demotion**

Alcoholism — company's action not disciplinary; grievor moved from truck driver's job to one where he could be more closely supervised; grievance dismissed. *Re National Grocers Company Limited & R.W.D.S.U., Loc. 427; MacDonald grievance*, April 12, 1984. Duchesneau-McLachlan — 4 pages. (18)†

**Discharge**

Absence without leave — grievor had supporting medical evidence; no just cause for termination; grievor to be reinstated with full seniority, pay and benefits. *Re Chicopee Manufacturing Limited & Chicopee Manufacturing Employees; Gandhi grievance*, April 7, 1984. Gandz — 9 pages. (19)†

Absence without leave; grievor overstayed leave of absence and vacation period — grievor's absentee rate not greater than company average; six-week suspension substituted. *Re LePage's Limited & E.C.W.U., Loc. 819; Mahal grievance*, April 6, 1984. McKechnie — 13 pages. (20)†

Absence without leave — insufficient proof for reason asserted; grievance dismissed. *Re Central Precision & U.S.W.A., Loc. 6624; Cameron grievance*, April 17, 1984. Barton — 9 pages. (21)†

Absenteeism — alcoholism and drug abuse — grievor participating and progressing in rehabilitation programme after discharge; conditional reinstatement. *Re Bell Canada & Communications Workers; Lukowicz grievance*, March 16, 1984. Majority: M. Picher, Robbins; dissent: Healy — 16 pages. (22)

Absenteeism — grievor conditionally reinstated under previous award — absenteeism continued to exceed plant average — company not obliged to consider circumstances surrounding absences; grievance dismissed. *Re Monarch Fine Foods Ltd. & Milk and Bread Drivers, Loc. 647; Gogna grievance*, April 6, 1984. Hunter — 11 pages. (23)†

Absenteeism — alcohol-related — grievor dealing with problem; past work record good; conditional reinstatement. *Re Metropolitan Toronto Zoo & C.U.P.E.; Deering grievance*, March 29, 1984. Davis — 8 pages. (24)†

Absenteeism — leave and sickness provisions preclude discharge for innocent absenteeism arising from sickness; grievor reinstated; grievance allowed. *Re Keeprite Inc. & Keeprite Workers; Phillips grievance*, April 3, 1984. Barton — 12 pages. (25)†

Culminating incident alleged — grievor involved in vehicle accident — fault not established; reinstatement with partial compensation. *Re Maple Lodge Farms Ltd. & U.F.C.W., Loc. 1105P; Rafael grievance*, April 2, 1984. Majority: Devlin, Robbins; dissent: MacDermid — 25 pages. (26)

Driving accident — grievor partly at fault — collective agreement not setting specific penalty; five-day suspension substituted. *Re International Carriers Ltd., Special Commodities Division (Steel & Bulk) & Teamsters Loc. 880; Herdman grievance*, April 25, 1984. MacDowell, Bondy, Laub — 25 pages. (27)

Falsification of time sheets alleged — merely amounting to use of deception to obtain work while on lay-off; reinstatement without compensation. *Re Cooper Canada Ltd. & Glass, Pottery, Plastics and Allied Workers, Loc. 366; Kool grievance*, March 16, 1984. M. Picher — 17 pages. (28)

Insubordination; failure to comply with plant rules — continued disregard for rules; grievance dismissed. *Re Titan Proform Co. Ltd. & U.A.W., Loc. 124; Johnson grievance*, March 26, 1984. O'Shea — 14 pages. (29)

Insubordination; grievor refused to perform routine task — board considers seniority, past record; two-week suspension without pay substituted. *Re Chef Foods Division of Willett Foods Ltd. & Teamsters Loc. 141; Lebarri grievance*, April 19, 1984. Hunter, Furlonger, Fee — 10 pages. (30)

Long-term absence due to sickness — provision for termination after 15-month's absence refers only to lay-off — evidence of reasonable prospects for return to work; reinstatement to sick-leave status without time limits. *Re Weston Bakeries Ltd. & Milk and Bread Drivers, Loc. 647; Kolakovic grievance*, April 9, 1984. Devlin — 15 pages. (31)†

Minutes of settlement filed and adopted by board as its award. *Re Silknit Ltd. & United Textile Workers; Ezekiel and Ezekiel grievances*, March 2, 1984. P. Picher, Irwin, McIntyre — 7 pages. (32)

Possession of alcohol while on duty — long-service employee, good work record; six-month suspension substituted. *Re Concrete Supplies of Windsor Inc. & Teamsters Loc. 880; Seguin grievance*, April 2, 1984. Majority: Barton, Laub; dissent: Burnell — 22 pages. (33)\*

Section 61.5 of *Canada Labour Code*; incompetence alleged — although inability to perform evidence, there was no past

record of progressive discipline; demotion substituted. *Re Soundair Corporation & Brent G.A. Clarke; Labour Code s.61.5*, March 30, 1984. Saltman — 25 pages. (34)

Theft alleged — grievor took \$200 worth of material mistakenly placed in garbage — 12-year unblemished record considered; reinstatement without compensation substituted. *Re Rothmans of Pall Mall Canada Ltd. & Bakery, Confectionery and Tobacco Workers, Loc. 319T; Young grievance*, April 25, 1984. Teplitsky — 5 pages. (35)

Theft alleged — no requisite intent to steal, grievor reinstated without loss of seniority; no compensation since acts contrary to company policy; grievance allowed. *Re Air Canada & I.A.M., Lodge 148; Harris grievance*, April 18, 1984. Brunner — 26 pages. (36)

Theft — grievor's explanation not credible, not a case to consider mitigating circumstances; grievance dismissed. *Re Cambridge, Corporation of City of, & C.U.P.E., Loc. 32; Carroll grievance*, April 17, 1984. Majority: McLaren, Storie; dissent: Madison — 9 pages. (37)

Theft of company property alleged — despite improbability of grievor's story, absence of cogent evidence that employer-owned product found in his possession; grievance allowed. *Re Drug Trading Company Ltd. and Druggists Corporation Ltd. & E.C.W.U., Loc. 11; Meglio grievance*, April 27, 1984. Davis — 19 pages. (38)†

Unsuitability for job of children's mental health worker alleged — based on grievor's stress and annoyance during questioning about off-duty conduct — grievor's reaction reasonable; grievance allowed. *Re Madame Vanier Children's Services & O.P.S.E.U.; Averill grievance*, March 30, 1984. Majority: O'Shea, McManus; dissent: Farrar — 19 pages. (39)

Work performance — inadequate regard for hygiene — recent record shows progressive discipline ineffective — lack of remorse considered; grievance dismissed. *Re Salvation Army Grace Hospital, Windsor, & S.E.U., Loc. 210; Pasciolla grievance*, April 27, 1984. Majority: Kruger, Burnell; dissent: Lewis — 17 pages. (40)

Work performance — lack of competence not established; grievance allowed. *Re El-Met-Parts, Division of Toromont Industries Ltd. & U.E., Loc. 520; Sokolowski grievance*, April 21, 1984. Solomatenko — 16 pages. (41)†

Working while on Workmen's Compensation — not fraudulent — related record balanced against personal circumstances; reinstatement without compensation for benefits substituted. *Re Windsor Roman Catholic Separate School Board & S.E.I.U., Loc. 210; Rollo grievance*, April 25, 1984. Majority: Brent, Warner; dissent: Nolan — 12 pages. (42)

### Discipline

Absenteeism policy — policy reasonable but certain applications of policy improper; matter to be remitted back to parties to determine implementation for individual grievances. *Re Wardair Canada (1975) Limited & C.A.L.F.A.; policy grievance*, March 16, 1984. P. Picher, Madigan, Beaulieu — 48 pages. (43)

Culminating incident — grievor refused to cooperate with employer — had been previously warned for aggressive and hostile attitude; written warning upheld. *Re Drug Trading Company Ltd., Toronto and Druggists' Corporation Ltd. & E.C.W.U., Loc. 11; Galvao grievance*, April 3, 1984. Lerner — 15 pages. (44)†



Driver's license temporarily suspended — company could have adjusted work schedule to accommodate grievor; shortage of work not just cause for suspension until licence reinstated — grievor to be compensated for lost wages and benefits; grievance allowed. *Re Bell Canada & Communications Workers; York grievance*, April 25, 1984. Majority: Kennedy, Robbins; dissent: Filion — 7 pages. (45)

Incompetence alleged — insufficient evidence to show wastage caused by grievor; grievance allowed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Parato grievance*, April 12, 1984. Majority: McLaren, Marshall; dissent: Storie — 13 pages. (46)

Insubordination — refusal of direct order to change work place — insistence on written note to excuse incomplete original work; one and one-half day suspension appropriate; grievance dismissed. *Re Seneca College & O.P.S.E.U.; Vattiatta grievance*, April 26, 1984. Majority: Brent, Halls-worth; dissent: Beaulieu — 7 pages. (47)

Insubordination; complaints about staffing directed to board rather than immediate supervisor; letter of reprimand substituted for suspension. *Re Thunder Bay District Health Unit & C.U.P.E., Loc. 1759; Boban grievance*, April 12, 1984. Duchesneau-McLachlan — 10 pages. (48)

Insubordination alleged — grievor acknowledged problems with his supervisor, trying to improve relationship, no cause for disciplinary suspension; grievance allowed. *Re Nepean Public Library & C.U.P.E., Loc. 2504; Gimson grievance*, April 2, 1984. Carrothers — 7 pages. (49)†

Leaving work to drink at pub during working hours — no grounds to mitigate suspension; failure to punch in and out when leaving company premises for coffee insufficient grounds for discharge; grievances allowed in part. *Re Kenroc Tools Inc. & U.S.W.A., Loc. 8747; Bester and Chessell grievances*, April 18, 1984. Swan — 12 pages. (50)†

Memorandum to grievor re deviation from standard procedure a notice only — not disciplinary; grievance not arbitrable. *Re Centennial College of Applied Arts and Technology & O.P.S.E.U.; Callas grievance*, March 30, 1984. Brent, Shields, Switzman — 6 pages. (51)

Secondary school teachers suspended without pay — School Board's power to remove teachers includes this lesser power; no duty of procedural fairness as grievors employees, not office holders; grievances dismissed. *Re London Board of Education & O.S.S.T.F., District 4; Pooley and Krisak grievances*, March 29, 1984. Brandt — 28 pages. (52)\*

Warning for absenteeism — intent of warning letter non-disciplinary; grievance dismissed. *Re Steinberg Inc. (Miracle Food Mart Division) & Teamsters Loc. 419; Polson grievance*, March 22, 1984. R.J. Roberts — 10 pages. (53)†

#### Employment Status

Part-time employees — on becoming a regular part-time employee, no wage recognition for previous casual part-time service — key difference in status is right to refuse work, not advance scheduling; grievances allowed in part. *Re Macdonell Memorial Hospital & C.U.P.E., Loc. 2274; individual and group grievances*, April 17, 1984. Kates — 20 pages. (54)

Temporary employee — held not to have attained regular employee status — not in a position which was "part of the continuing organization"; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Loc. 1000; Reichenbach*

*grievance*, April 10, 1984. Arthurs, McHenry, McCullough; addendum: McCullough — 11 pages. (55)

#### Grievance Procedure

Timeliness — mandatory time limits for decision to proceed to arbitration not triggered unless written reply by employer — employer failed to show prejudice by delay — however, union delay is reason to reduce grievor's compensation in discharge case. *Re Maple Lodge Farms Ltd. & U.F.C.W., Loc. 1105P; Rafael grievance*. See (26), *supra*. (56)

Timeliness — grievance filed too late, untimely; grievance dismissed. *Re John Rennie Limited & Amalgamated Clothing and Textile Workers, Loc. 740; Robinson grievance*, April 13, 1984. Verity — 5 pages. (57)

Timeliness — unless there is specific penalty for failure to comply, clause will be interpreted as directory not mandatory — laches only applies where actual prejudice shown; grievance arbitrable. *Re Robin Hood Multifoods & U.F.C.W.U., Locs. 416-P, 342-P; company grievance*, March 21, 1984. Majority: H. Brown, Salisbury; dissent: Walsh — 28 pages. (58)\*

#### Holiday Pay

Requirement to work 15 of 30 days qualify for preceding holiday — referring to calendar days and not scheduled working days; grievance dismissed. *Re Charterways Transportation Limited (Point Edward, Ont.) & Canadian Brotherhood of Railway Transport and General Workers; policy grievance*, March 27, 1984. Brent — 4 pages. (59)†

Calculation — no prorating of the number of weeks of vacation — employees to be paid at their hourly rate for a standard work week — previous year's vacation pay not to be included in total earnings; grievances allowed in part. *Re Canadian Scale Company Limited & Int'l. Molders and Allied Workers; policy grievances*, April 11, 1984. Teplitsky — 4 pages. (60)

Employees with one year or more continuous service entitled to paid holiday on birthday — probationer's temporary lay-off did not bring employment to an end — grievor to be compensated or given day off with pay in lieu; grievance allowed. *Re Susan Shoe Industries Limited & United Food and Commercial Workers Footwear Division, Loc. 233F; Alvez grievance*, March 30, 1984. M. Picher — 21 pages. (61)†

#### Hours of Work

Mid-week change — no guarantee of 40 hours work, but agreement prohibits reducing regular hours because of overtime worked — also evidence that 40 hours regular pay was promised. *Re Goodyear Canada Inc. & United Rubber Workers, Loc. 232; Clarke and Wills grievances*, April 24, 1984. Arthurs — 11 pages. (62)

New shift schedule — employer may schedule abnormal hours outside regular hours of work stated in collective agreement but cannot do so on a regular basis to create a new norm; grievance allowed. *Re Iroquois Falls, Corporation of Town of, & C.U.P.E., Loc. 259; group grievance*, March 28, 1984. Majority: Adams, Loiselle; dissent: Clark — 14 pages. (63)

Temporary assignment to hours consistent with those of a shift worker — entitled to all benefits afforded shift workers; grievance allowed. *Re Shell Canada & E.C.W.U., Local 848; Paterson grievance*, April 10, 1984. Majority: Weatherill, Van Rassel; dissent: Billings — 10 pages. (64)

### Implementation of Award

Supplementary award — change of conditions concerning grievor's weight problem. *Re Etobicoke, Corporation of Borough of, & Etobicoke Professional Firefighters Association, Loc. 1137; Oswin grievance*, April 19, 1984. Kennedy — 3 pages. (65)

### Job Posting

Academic qualifications raised — not arbitrary, discriminatory or in bad faith — demands of job had increased — previous level not a right or benefit so as to trigger preservation of benefits clause; grievance dismissed. *Re Ottawa-Carleton Regional Municipality & Ottawa-Carleton Public Employees, Loc. 503; Boileau grievance*, March 30, 1984. Majority: P. Picher, Hallman; dissent: Switzman — 33 pages. (66)

Status of employee displaced by arbitration award — wrongly-posted employee loses seniority and benefits; employee returned to temporary status. *Re Windsor, Corporation of City of, & Windsor Municipal Employees, Loc. 543, C.U.P.E.; policy grievance*, April 18, 1984. Brandt — 7 pages. (67)

Temporary employee hired to fill job vacancy — posting not required; grievance dismissed. *Re Thames Valley Children's Centre & O.P.E.I.U., Loc. 468; policy grievance*, April 9, 1984. Brandt — 9 pages. (68)†

Temporary job — grievor not qualified — period of familiarization would not help; grievance dismissed. *Re Kendall Canada & U.S.W.A., Loc. 8505; Dick grievance*, April 2, 1984. Foisy — 11 pages. (69)†

### Lay-off

Bumping rights — interpretation of turnover limitations in respect of classifications and work groups — negotiating history and related clauses examined; grievance allowed. *Re Ontario Hydro & C.U.P.E., Loc. 1000; Alderson grievance*, April 26, 1984. Adams, Switzman, Gomer — 19 pages. (70)

Notice — proper notice given under collective agreement — whether this is additional to E.S.A. notice periods is not arbitrable; grievance dismissed. *Re McGraw-Edison of Canada Ltd. & U.S.W.A., Loc. 7134; union policy grievance*, April 16, 1984. Foisy — 8 pages. (71)†

Parties agreed that employees to take unpaid day every five weeks in lieu of lay-off — company may assign overtime to employees at work; not obliged to call in grievor from day off; grievance dismissed. *Re Bell Canada & Communications Workers; Stajanowski grievance*, April 25, 1984. Majority: Springate, Healy; dissent: Robbins — 11 pages. (72)

Qualifications — grievor did not fulfil qualifications for tractor-trailer driver position sought; grievance dismissed. *Re Coca-Cola Limited & Soft Drink Workers; Bradley grievance*, March 9, 1984. P. Picher — 15 pages. (73)

Qualifications — grievor failed to establish requisite ability to perform work sought; grievance dismissed. *Re Long Manufacturing Division, Borg-Warner (Canada) Ltd. & I.A.M., Loc. 2330; Burke grievance*, March 26, 1984. H. Brown, Lewis, Boehmer — 10 pages. (74)

Qualifications — grievors would not be able to perform baking functions after a brief familiarization period; grievances dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Loc. 414; Gammon and Thomson grievances*, April 2, 1984. Majority: Weatherill, Blair; dissent: Dahmer — 12 pages. (75)

Status change from employee on disability to employee on lay-off — no work available for grievor having regard to the restrictions caused by injury, a general shortage of work and his seniority; grievance dismissed. *Re De Havilland Aircraft of Canada Ltd. & U.A.W., Loc. 112; Dhillon grievance*, March 30, 1984. H. Brown — 18 pages. (76)

Unilateral reduction of normal hours of work as part of regular schedule — unequal reduction constituting lay-off; grievance allowed. *Re Ballycliffe Lodge Limited & S.E.U., Loc. 204; policy grievance*, March 28, 1984. Majority: Adams, Lewis; dissent: Wace — 15 pages. (77)\*

### Overtime

Distribution — grievor available; grievor to be paid eight hours at overtime rate; grievance allowed. *Re Inglis Limited & U.S.W.A., Loc. 2900; Joseph grievance*, April 10, 1984. Foisy — 9 pages. (78)†

Distribution — grievor not regularly assigned to task; Stewardson grievance dismissed; once overtime assigned, even if on mistaken assumption, cannot be arbitrarily withdrawn; Andrews grievance allowed. *Re Standard Products (Canada) Ltd. & Canadian Rubber Workers, Loc. 154; Stewardson and Andrews grievances*, April 18, 1984. Lerner — 9 pages. (79)†

Distribution — grievor refused overtime opportunity; not established that it was offered too late to be credited on distribution list; grievance dismissed. *Re Ex-Cell-O Corporation of Canada Ltd. & Int'l. Molders and Allied Workers, Loc. 49; Fretter grievance*, March 28, 1984. Samuels — 7 pages. (80)

Entitlement to be charged with average overtime not to be deferred until familiarization and training period completed; grievance allowed. *Re Northern Telecom Canada Limited & U.A.W., Loc. 1915; Gambell grievance*, April 11, 1984. Kennedy — 11 pages. (81)

Parties agreed that employees to take unpaid day off every five weeks in lieu of lay-off — company may assign overtime to employees at work — not obliged to call in grievor from day off; grievance dismissed. *Re Bell Canada & Communications Workers; Stajanowski grievance*. See (72), *supra*. (82)

"Prearranged overtime" — meaning neither arranged before the employer has left the premises nor arranged at short notice; grievance allowed in part. *Re Butler Metal Products and Butler Polymet, Divisions of Guthrie Canadian Investments Limited & U.A.W., Loc. 1780; policy grievance*, April 10, 1984. Schiff — 3 pages. (83)

Requirement to provide hot meals after two hours overtime — notification of overtime a day in advance does not change the "scheduled quitting time"; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; union grievance*, April 5, 1984. Teplitsky — 4 pages. (84)

### Premium Pay

Temporary upgrade premiums payable to "group A" maintenance technicians when working alone and required to make critical judgements without consultation or assistance; grievances allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; grievances T-786; H-232, H-234*, March 16, 1984. M. Picher — 20 pages. (85)

Interpretation of "corporation declared holiday" — day in dispute neither a statutory holiday nor substitute for statutory holiday; grievance dismissed. *Re Canadian Broadcasting Corporation & National Radio Producers' Association; group grievance*, April 10, 1984. P. Picher — 11 pages. (86)



**Promotion**

Procedure: failure to give written notice that promotion for purpose of employee development — promotion not vitiated by employer's failure to give written notice of purpose to union when verbal notice given; grievance allowed in part. *Re Bell Canada & Communications Workers; Barden grievance*, March 23, 1984. Majority: Carter, Healy; dissent: Beaulieu — 8 pages. (87)

Qualifications — grievor not relatively equal to incumbent selection; selection process not inadequate; grievance dismissed. *Re Penmans Division, Dominion Textile Inc., Cambridge and Kitchener & Amalgamated Clothing and Textile Workers, Loc. 1967; group grievance*, April 12, 1984. McLaren, Blais, Mallett — 11 pages. (88)

**Recall**

Job posted during lay-off — no automatic right to be recalled to vacancy — more senior employees may be entitled to job despite lay-off; grievance dismissed. *Re Molony Electric Corp. & U.E., Loc. 536; Musarai grievance*, April 24, 1984. Majority: Weatherill, Hutchens; dissent: Addario — 13 pages. (89)\*

Qualifications — grievor lacking skills and ability to do available work; grievance dismissed. *Re AEL Machinery Limited & U.E.; Kelly grievance*, April 2, 1984. Majority: Weatherill, Healy; dissent: Hutchens — 14 pages. (90)\*

**Seniority**

Loss of seniority — clause that would be detrimental if applied retroactively will only do so if clear language; grievance allowed. *Re Sault Ste. Marie Community Services Board & C.U.P.E., Loc. 3; Varcoe grievance*, April 6, 1984. Teplitsky, Kozak, Forbes — 5 pages. (91)

Transfer out of bargaining unit — grievor entitled to retain original seniority date while working outside bargaining unit; grievance dismissed. *Re Loblaws, Division of Westfair Foods Ltd. & Retail Clerks Union, Loc. 409; policy grievance*, March 26, 1984. Houston — 10 pages. (92)†

**Sick Leave**

Application for sick leave back dated to first date of absence from work due to injury notwithstanding application for leave late — injury fully substantiated — no dishonesty — no prejudice to employer; grievance allowed. *Re Children's Aid Society of the District of Nipissing & C.U.P.E., Loc. 2049; Larmer grievance*, March 16, 1984. Lunney, Gower, Young — 6 pages. (93)

Depletion of credits — where 3.5 hours considered a working day for credit accumulation each 3.5 hour period considered a working day for credit depletion; grievance allowed. *Re Wardair Canada & C.A.L.F.A.; Stannard grievance*, April 11, 1984. Saltman — 21 pages. (94)

Entitlement of employees on long-term disability — status as employee not enough to get full benefits; must match requirements of specific section — must be active to accumulate credits; grievance dismissed. *Re Ottawa Board of Education & O.S.S.T.F.; union grievance*, April 9, 1984. Majority: Shime, Chodos; dissent: Tisi — 19 pages. (95)\*

**Temporary Employees**

Payment in lieu of benefits — entitlement to other benefits defined. *Re Thames Valley Children's Centre & O.P.E.I.U., Loc. 468; policy grievance*. See (68), *supra*. (96)†

**Union Officials**

Skilled trades chairman on lay-off — company not obliged to recall him in order to attend meeting — if he is on the job, he is to be released to attend; grievance dismissed. *Re Massey-Ferguson Industries Limited & U.A.W., Loc. 458 Brantford; group grievance*, April 3, 1984. Samuels — 5 pages. (97)†

**Union Rights**

Composition of bargaining team — stipulated composition of collective agreement administering committee is not the bargaining committee; grievance dismissed. *Re University of Western Ontario & C.U.P.E., Loc. 2361; employer grievance*, April 9, 1984. Hinnegan — 5 pages. (98)

**Vacation Pay**

Calculation — time lost because of sickness or non-industrial accident for which weekly indemnity benefits paid not to be included in calculation of vacation pay; grievance dismissed. *Re CIP Inc. Container Division & Canadian Paperworkers, Loc. 343; policy grievance*, March 30, 1984. O'Shea — 16 pages. (99)

**Wages**

Allowance for special education — programme found to be special education despite legislative change; grievances allowed. *Re Ottawa Roman Catholic Separate School Board & Ontario English Catholic Teachers' Association; Bussieres, Chretien, Taillefer-Ferguson grievances*, March 20, 1984. Majority: Adams, Power; dissent: Beaudry — 14 pages. (100)

Allowance in lieu of benefits — allowance increase retroactive along with wage increase; allowance not to be used in base pay for calculating holiday pay; allowance excluded from calculation of overtime pay; allowance only added for time worked and does not attach to vacation pay or sick benefits. *Re 132 Participating Hospitals & O.N.A.; union grievance*, March 30, 1984. Majority: Saltman; dissents in part: Winkler, Paliare — 53 pages. (101)

Annual increment — grievor entitled to increment on anniversary date of date of hire; grievance allowed. *Re Catholic Children's Aid Society of Metropolitan Toronto & C.U.P.E., Loc. 2190; Audy grievance*, April 11, 1984. Devlin — 8 pages. (102)

Calculation of daily pay where annual salary stated — past practice considered to resolve ambiguity; grievance allowed. *Re Northwestern Health Unit & O.N.A.; McCrea et al grievance*, April 6, 1984. Majority: Hearn, Beaulieu; dissent: Daniels — 24 pages. (103)

Compensation plan to be effective February 1, 1984 — not affected by *The Public Sector Prices and Compensation Review Act* — "9 and 5" control period ended January 31, 1984 — employees to be paid wage rates effective February 1, 1984; grievance allowed. *Re Essex Nursing Home, Division of 538414 Ontario Limited & C.U.P.E., Loc. 1370.1; union grievance*, March 28, 1984. Hinnegan — 5 pages. (104)\*†

Incentive pay — employee entitled to at least the rate of pay in wage schedule; incentive pay paid if calculation is greater than minimum rate; grievance allowed. *Re Date Industries Ltd. & Int'l. Molders and Allied Workers, Loc. 29; Comeau grievance*, April 11, 1984. Samuels — 9 pages. (105)

Paid lunch break — grievors not in qualifying group — estoppel not applicable since practice began and ended during current term of agreement; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; group grievance*, April 5, 1984. Teplitsky — 3 pages. (106)

Payment by bank deposit — scheme cannot be mandatory — dissenters must be paid on normal day as set out in agreement; grievances allowed. *Re Queen Elizabeth Hospital & C.U.P.E., Loc. 1156; Merton, Gardner and union grievances*, March 16, 1984. Majority: Lunney, Beaulieu; dissent: Blair — 11 pages. (107)

Prorating of responsibility allowances for part-time teachers — full range of responsibilities performed — provision to prorate "full salary" is ambiguous — no accepted past practice — unfair not to pay for work performed; grievance allowed. *Re Renfrew County Board of Education & O.S.S.T.F., District 25; union policy grievance*, April 12, 1984. Majority: P. Picher, Ross; dissent: Riddell — 28 pages. (108)

Rate of pay — interpretation of salary schedule as affected by inflation restraint legislation; grievance allowed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; policy grievance*, April 16, 1984. Solomatenko — 10 pages. (109)\*†

Right to receive top rate within classification — doubts about grievor's physical capacity — performing full range of duties sooner than employer claimed; grievance allowed in part. *Re Moloney Electric Corporation & Int'l. Union of Electrical, Radio and Machine Workers, Loc. 536; Hansen grievance*, March 17, 1984. Jolliffe, Healey, Knipfel — 12 pages. (110)

Salary entitlement where absence on maternity leave — salary not to be reduced because of vacation period. *Re Centennial College & O.P.S.E.U.; McCormack grievance*, April 4, 1984. Majority: Brent, Horan; dissent: Hubert — 5 pages. (111)

Proper rates not paid — duration of violation considered — benefit to employer precludes estoppel; grievance allowed. *Re West Hill Tavern & International Beverage Dispensers and Bartenders Union, Loc. 280; union policy grievance*, March 13, 1984. Egan — 5 pages. (112)†

Piece-rate changes — employer may not correct clerical error in applying piece rates made prior to 1975 — employer may, however, establish new rate; grievance allowed in part — compensation ordered. *Re Brown Shoe Company of Canada Ltd. & U.F.C.W.U., Loc. 486; Bellefeuille grievance*, Nov. 15, 1983. Bernstein — 7 pages. (113)†

Rate — grievors transferred to lower-rated jobs because of lack of work in regular jobs — company entitled to pay lower rate; grievance dismissed. *Re MacMillan-Bathurst Inc. & International Woodworkers, Loc. 2-76; Keats and Lawry grievance*, Feb. 3, 1984. O'Shea — 11 pages. (114)†

Retroactive increases to terminated employees — compliance ordered. *Re St. Raphael's Nursing Homes Limited (McNicoll) & S.E.U., Loc. 204; policy grievance*, March 23, 1984. Black — 14 pages. (115)†

#### Welfare Plans

Choice of insurance carrier — collective agreement sets out benefits to be provided, not which plan; grievance dismissed. *Re Canadian General Tower & United Rubber Workers, Loc. 862; union policy grievance*, March 16, 1984. Hunter — 7 pages. (116)†

Prescription-plan coverage for retired employees — held to be a proper and timely policy grievance, not intended to apply to those who retire early at reduced pension; grievance dismissed. *Re University of Windsor & C.U.P.E., Loc. 1001; union grievance*, March 15, 1984. McLaren — 18 pages. (117)

Weekly-indemnity benefits — terms of insurance policy not incorporated into collective agreement — obligation on employer to facilitate coverage; grievance allowed. *Re Oakwood Park Lodge (Medi Park Lodges Inc.) & S.E.U., Loc. 204; Tait grievance*, March 22, 1984. Majority: Verity, Beaulieu; dissent: Graham — 9 pages. (118)

Insurance premiums for dependents — *Education Act* does not preclude such benefits being part of a collective agreement. *Re Renfrew County Board of Education & Renfrew County Division, District 25, O.S.S.T.F.; policy grievance*, April 4, 1984. Majority: Brent, Ross; dissent: Riddell — 18 pages. (119)

Payment of premium during sickness — where contract provides either 26 weeks or 20% of service length employee eligible to 26 weeks for each separate illness until 20% of service reached. *Re TIW Industries (Steel Plate Work Division) & U.S.W.A., Loc. 2820; policy grievance*, March 29, 1984. Black — 8 pages. (120)

Weekly-indemnity plan — collective agreement only provides for payment of premiums; denial of benefits not arbitrable. *Re O-Pee-Chee Company Ltd. & Int'l. Molders and Allied Workers, Loc. 49; Hajar grievance*, March 27, 1984. Brent — 8 pages. (121)

#### Work Assignment

Batcher's job computerized and performed by management — no substantive or qualitative change in job function; grievance allowed. *Re Hoffman Concrete Inc. & Teamsters Loc. 91; policy grievance*, March 9, 1984. Fraser — 14 pages. (122)†

Job fragmented and distributed to others — elimination of licencing-officer job was improper elimination of classification; grievance allowed. *Re Vaughan, Corporation of Town of, & C.U.P.E., Loc. 1090; union grievance*, March 22, 1984. Betcherman — 6 pages. (123)†

Special holiday run — grievor precluded from sign-up having elected spare board status; grievance denied. *Re London Transit Commission & A.T.U., Loc. 741; Miller grievance*, March 6, 1984. Gorsky — 10 pages. (124)†

Warehousemen dismantling shelving — properly the work of maintenance men — past practice considered; grievances allowed in part. *Re Carrier Air Conditioning & Sheet Metal Workers, Loc. 575; McLean, Villena, Koller, Woodward grievances*, March 6, 1984. Barton — 10 pages. (125)†

Bargaining-unit work assigned to excluded personnel while employees in relevant classification on lay-off — breach; grievance allowed. *Re De Havilland Aircraft of Canada Limited & U.A.W., Loc. 112; policy grievance*, March 28, 1984. H. Brown — 10 pages. (126)

Change in class timetable resulting in extra assigned supervisory time — failure to prove facts necessary; grievance dismissed. *Re Renfrew County Board of Education & Renfrew County Secondary School Teachers; union grievance*, March 28, 1984. Majority: McLaren, Riddell; dissent: McNeil — 13 pages. (127)

Supervisors allegedly performing bargaining-unit work — creation and maintenance of computer-library system not bargaining-union work when merely a more efficient way of performing management function; grievance dismissed. *Re De Havilland Aircraft of Canada Ltd. & U.A.W., Loc. 673; group grievance*, March 30, 1984. O'Shea — 12 pages. (128)†



## Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the month of March, 1984.

### Arbitrability

Settlement of s.1(4) "related employer" grievance alleged — employer counsel had ostensible authority to settle from both employers — settlement established; declaration of binding agreement. *Re Dominion Stores Ltd. and Min-A-Mart Ltd. & Carpenters' District Council of Toronto and Vicinity on behalf of U.B.C.J.A., Locs. 27 & 1304; union grievance*, Feb. 9, 1984. Franks, Stamp, Rutherford — 9 pages. (129)

### Collection

Welfare fund and other contributions — employer not present at hearing; order to pay issued. *Re Union Carpentry Contractors Ltd. & Carpenters' District Council of Toronto and Vicinity, U.B.C.J.A., Loc. 1190; union grievance*, Feb. 17, 1984. Howe, Wilson, Rutherford — 2 pages. (130)

### Collective Agreement

Employer bound by provincial agreement — lack of formal application to employer's association no bar when employer participated in association and abided by agreements; grievance arbitrable. *Re Twin Electric and Ermac Power and Control Ltd. & I.B.E.W., Loc. 303; union grievance*, Feb. 23, 1984. Mitchnick, Wightman, Cooke — 4 pages. (131)

Related-employer application — order made according to settlement between parties. *Re Tri-Con Mechanical (Sarnia) Ltd. and Tri-Con Mechanical Holdings Ltd. & International Brotherhood of Boilermakers, Loc. 128; union grievance*, Feb. 3, 1984. Satterfield, Ballentine, Wilson — 4 pages. (132)

### Damages

Reconsideration of decision — order to pay compound interest varied to simple interest — deductions for income tax or U.I.C. need not concern the board — fact that order results in double payment for work performed not improper; award amended in part. *Re Beckett Elevator Company Ltd. & International Union of Elevator Constructors, Loc. 50 & National Elevator and Escalator Association (Intervenors); employer request for reconsideration*, Feb. 6, 1984. MacDowell, Kennedy, Murray — 13 pages. (133)

Typographical error in previous award — order to pay \$909.54 corrected to read \$1,909.54. *Re Ferracon Construction Ltd. & Labourers, Loc. 506; union grievance*, Feb. 21, 1984. Gray, Wilson, Rutherford — 2 pages. (134)

### Hiring Hall

Refusal to hire tradesman referred by union — grievor had previous convictions linking him to Irish Republican Army — not unreasonable, in bad faith or discriminatory to refuse to employ grievor even in non-nuclear generating plant — freedom of association not violated even if charter applies; grievance dismissed. *Re Ontario Hydro & I.B.E.W., Loc. 1788; Gilroy grievance*, Feb. 27, 1984. Adams, Wightman, Cooke — 38 pages. (135)

### Procedure

Bench warrant — not issued where witness served with subpoena day before hearing even though he may have had notice of hearing earlier. *Re Standard Insulation Ltd. & International Association of Heat, Frost Insulators and Asbestos Workers, Loc. 95; union grievance*, Feb. 13, 1984. Furness, Kobryn, Ronson — 4 pages. (136)

## The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the months of March, April, May and June, 1984.

*Brantwood Manor Nursing Homes Limited & O.N.A.*; supplementary award. Ladd, Mustard, McIntyre — 26 pages.

*Brouillette's Manor Limited & O.N.A.* Brent; partial dissents: Bartlet, Switzman — 34 pages.

*Brucefield Manor Ltd. and Brucefield Manor Retirement Lodge & C.L.A.C.* Knopf; partial dissent: Graham; dissent: Adema — 19 pages.

*Edward Street Manor Nursing Home & O.N.A.*; supplementary award. Betcherman, Mustard, Switzman; addendum Switzman — 35 pages.

*Halton Centennial Manor (Regional Municipality of Halton) & C.U.O.E.*; supplementary award. Majority: H. Brown, Harrison; dissent: Billings — 10 pages.

*Marshall Gowland Manor (City of Sarnia) & London and District Service Workers, Loc. 220*; supplementary award. Majority: P. Picher, Lewis; dissent: Drmaj — 26 pages.

*Nel-Gor Castle Nursing Home & C.U.P.E., Loc. 2564.* Brunner, Hassell, Robbins — 28 pages.

*Oakwood Park Lodge (Medipark Lodges Inc.) & O.N.A.* Majority: H. Brown, Mayne; dissent: Graham — 31 pages.

*Participating Hospitals & C.U.O.E.* Majority: Barton, Wakely; dissent: Harrison — 21 pages.

*V.S. Services Ltd. (Ontario Crippled Children's Hospital) & Workers' Union of Queen Elizabeth Hospital.* Teplitsky, Hamilton, Ballantyne — 3 pages.

## Filing Awards

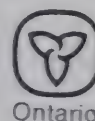
The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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Publications

# Monthly Bulletin



Ontario Ministry of Labour



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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1979 which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Change of Address

Please note that effective December 17, 1984, arbitrators Mr. H.D. Brown and Mr. J.D. O'Shea will be moving to the following address: 700 Dorval Drive, Suite 705, Oakville, Ontario, L6K 3V3; telephone (416) 842-8710.

Arbitrators Mrs. M.K. Saltman and Mr. J.F.W. Weatherill have also moved as follows: 170 Frederick Street, Suite 301, Toronto, Ontario, M5A 5J1; telephone (416) 366-3091.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of May, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Declaration under s. 1(4) of *Labour Relations Act* makes Board and City one employer for purposes of Act — scope of declaration includes arbitral matters — "one employer" under Act is party to collective agreement; grievance arbitrable. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; preliminary objection*, May 23, 1984. Brent — 4 pages. (1)





Job posting — grievance broad enough to challenge qualifications set by company; grievance arbitrable. *Re Sault College of Applied Arts and Technology & O.P.S.E.U.; Kennedy grievance*, May 4, 1984. Brunner, Courtney, Ziemba — 12 pages. (2)

Lack of issue remaining following negotiating and lapse of time — no useful remedy; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Loc. 1000; policy grievance*, May 24, 1984. Brunner, Chatland, Lewis — 16 pages. (3)

Welfare plans; length of continuation after collective agreement terminated — facts occurring after termination and statutory freeze period; grievance not arbitrable. *Re General Tire Limited & United Rubber Workers, Loc. 536; policy grievance*, Jan. 12, 1984. Majority: Rayner, Dinsdale; dissent: Mitchell — 21 pages. (4)\*

#### Bargaining Unit

Scope of agreement — whether nurses employed in nursing home operated by same employer are included in recognition clause — negotiating history indicates they were not intended to be — alternatively union is estopped; grievance dismissed. *Re Arnprior and District Memorial Hospital & O.N.A., Loc. 200; union grievance*, Dec. 19, 1983. Majority: Linden, Winkler; dissent: Symes — 17 pages. (5)

Shift supervisors — union did not establish that supervisors performed bargaining-unit work — functions may be similar, emphasis different; no requirement to perform hands-on work; grievances dismissed. *Re Boise Cascade Canada Ltd. & I.A.M., Lodge 771; policy and individual grievances*, April 30, 1984. O'Shea — 21 pages. (6)†

#### Classification

Creation of new classification claimed — some aspects of lower-rated operators' job added to mechanics' duties — not substantial enough to constitute new classification; grievance dismissed. *Re Domglas Inc. & United Glass and Ceramic Workers, Loc. 260; union policy grievance*, March 8, 1984. Rayner — 12 pages. (7)

Higher classification sought — grievance misconceived — after initial slotting into new classification scheme, normal advancement is only through job postings; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Nelson grievance*, April 17, 1984. M. Picher — 24 pages. (8)

Higher rate claimed while performing newly-assigned duty — previously performed by higher classification, but not a central part of duties; grievance dismissed. *Re Domglas Inc. & United Glass and Ceramic Workers, Loc. 258; group grievance*, May 15, 1984. Beck — 12 pages. (9)

New job qualifications — new qualification relevant to job as it had evolved — licencing requirement not enough to trigger reclassification; grievance dismissed. *Re Uniroyal Ltd. (Kitchener) & United Rubber Workers, Loc. 80; union grievance*, May 10, 1984. Devlin — 9 pages. (10)†

Waiters drawing beer — wages to be based on job performed not job title; grievance allowed. *Re Monarch Tavern & Int'l. Beverage Dispensers' and Bartenders' Union, Loc. 280; union grievance*, April 24, 1984. H. Brown — 10 pages. (11)†

#### Contracting Out

Employer held not to have made real and operational changes consistent with the work in question being performed by another employer — health-care aides remaining employees — improper lay-off of former aides;

grievance allowed. *Re Don Mills Foundation for Senior Citizens & S.E.I.U., Loc. 204; policy grievance*, May 18, 1984. Majority: P. Picher, Lewis; dissent: Saxe — 85 pages. (12)\*

#### Damages

Calculation based on previous award — entire period between grievance and date of award appropriate measure; calculation accordingly. *Re Simcoe Hotel & Int'l. Beverage Dispensers' and Bartenders' Union, Loc. 280; Kaley grievance*, April 23, 1984. McKechnie — 5 pages. (13)†

Calculation of compensation — lost tips while improperly prevented from working as waitress not compensable — determination of number of hours that grievor should have worked. *Re 467151 Ontario Ltd. operating as Crest Hotel & Hotel Employees, Restaurant Employees, Loc. 75; Baraniuk grievance*, May 1, 1984. Davis — 7 pages. (14)†

Interest on pay out of accumulated sick-leave credits — payments made in stages according to settlement; no interest payable. *Re Alexandra Marine and General Hospital & O.N.A.; union grievance*, May 17, 1984. Majority: Hunter, Storie; dissent: Beaulieu — 9 pages. (15)

#### Discharge

Absent without reasonable excuse — management properly exercised discretion in rejecting reason given; grievance dismissed. *Re Standard Tube Canada Inc. & U.A.W., Loc. 1965; Croft grievance*, May 15, 1984. R.J. Roberts — 11 pages. (16)

Absenteeism; frequent short-term intermittent absences and six-month absence for jail sentence — grievor one of two linemen working as team — company had taken measures to assist and accommodate grievor; discharge upheld but time-limited preference for rehire ordered; grievance allowed in part. *Re Bell Canada & Communications Workers; Wetherell grievance*, May 14, 1984. Shime, Filion, Walsh — 6 pages. (17)

Absenteeism — grievor repeatedly failed to report for duty despite corrective, progressive discipline; grievance dismissed. *Re Alcan Canada Products Limited (Kingston Works) & U.S.W.A., Loc. 343; Stuart grievance*, April 30, 1984. Majority: H. Brown, Sanderson; dissent: Hogan — 21 pages. (18)

Absenteeism; grievor suffered industrial accident and notified company of absence — grievor lied about subsequent activities — lie does not amount to theft or fraud; grievor reinstated without pay. *Re Stelco Inc. & U.S.W.A., Loc. 1005; Lupton grievance*, May 10, 1984. Majority: Rayner, Marshall; dissent: Hines — 18 pages. (19)

Abuse of leave of absence for union business — grievor's conduct breached trust relationship; grievance dismissed. *Re Queen Elizabeth Hospital & C.U.P.E., Loc. 1156; Gardner grievance*, May 22, 1984. O'Shea — 15 pages. (20)†

Abuse of students — prior incidents occurred; grievance dismissed. *Re Windsor Association for the Mentally Retarded & C.U.P.E., Loc. 2345; Morrissey grievance*, May 15, 1984. Majority: Barton, Kavanaugh; dissent: Maddison — 13 pages. (21)

Accepting gainful employment without company's consent while on sick leave — deemed quit by operation of term of collective agreement — no jurisdiction to amend; grievance dismissed. *Re Voyageur Colonial Limited and its Successors & Canadian Brotherhood of Railway Transport and General Workers; Chatelain grievance*, May 28, 1984. Majority: H. Brown, Madigan; dissent: Collins — 30 pages. (22)





Alteration of time card — grievor refused opportunity to amend time card, insubordinate, poor past work record; grievance dismissed. *Re Rio Algom Limited & U.S.W.A.; Gervais grievance*, May 4, 1984. O'Shea — 21 pages. (23)

Breach of security; no theft alleged — ten years service and promise to abide by security regulations considered; reinstatement with no compensation. *Re Royal Canadian Mint & Public Service Alliance of Canada; Brathwaite grievance*, May 18, 1984. Majority: Carter, Butler; dissent: Saxe — 11 pages. (24)

Consuming alcohol on company premises — only evidence presence of two beer bottles — grievors offer reasonable explanation — grievors to be reinstated with full compensation. *Re Rothmans of Pall Mall Canada Limited & Bakery, Confectionery and Tobacco Workers, Loc. 319T; Daye, Krawchuk grievances*, May 4, 1984. Samuels — 4 pages. (25)

Culminating incident; absenteeism — failure to report for work; failure to provide adequate medical substantiation of inability to work — poor past record, progressive discipline applied; grievance dismissed. *Re General Motors of Canada Limited & U.A.W., Loc. 222; Huider grievance*, March 13, 1984. Palmer — 13 pages. (26)

Culminating incident — failure to work overtime assignment — overtime voluntary and grievor did not agree to work; grievance allowed. *Re Ingersoll Fasteners & U.S.W.A., Loc. 3683; Smith grievance*, March 8, 1984. Rayner — 7 pages. (27)

Culminating incident — insubordination and failure to co-operate in filing accident report — established — mitigating factors — work environment, new supervisor — penalty reduced to two-month suspension. *Re Domtar Forest Products & Lumber and Sawmill Workers, Loc. 2693; Dupuis grievance*, May 15, 1984. Baum, Byers, Johnston — 13 pages. (28)

Culminating incident: insubordination; failure to follow supervisor's order — poor past record; progressive discipline applied; grievance dismissed. *Re Firestone Steel Products of Canada & U.A.W., Loc. 27; Crofts grievance*, April 12, 1984. Welling — 12 pages. (29)

Culminating incident — leaving plant without permission and without punching out; long record of progressive discipline related to grievor's alcoholism; long service employee; grievor in rehabilitation programme — conditional reinstatement; grievance allowed in part. *Re Allied Chemical & U.A.W., Loc. 89; Kainz grievance*, May 11, 1984. Kruger — 14 pages. (30)

Dishonest misrepresentation of physical capacity to work — mitigating factors considered: subjective nature of pain, employer's failure to demand medical proof, grievor's record; suspension substituted. *Re Canon Inc., Plastics Division & Int'l. Molders, Allied Workers, Loc. 64; Perkovic grievance*, May 16, 1984. Hunter — 20 pages. (31)

Dishonesty: short selling customers — actions amounted to theft from customers; grievance dismissed. *Re Ye Olde Brunswick House (Busdevelop Corp. Ltd.) & Int'l. Beverage Dispensers' and Bartenders' Union, Loc. 280; Papadeas grievance*, May 7, 1984. O'Shea — 12 pages. (32)†

Drug offence — possession for purposes of trafficking — company town — concern for other employees reasonable; grievance dismissed. *Re Mattabi Mines Ltd. & U.S.W.A., Loc. 7879; Chrusz grievance*, April 16, 1984. O'Shea — 20 pages. (33)

Drug use on job — work records considered; grievances dismissed. *Re Babcock and Wilcox Refractories Ltd. & U.S.W.A., Loc. 16503; Lyons and Harrison grievances*,

May 8, 1984. Majority: Kennedy, Simpson; dissent: Hart — 19 pages. (34)

Insubordination; grievor delayed in following order; raised voice to supervisor — grievor disciplined for similar conduct in past; some provocation; mitigating factors; three-month suspension substituted. *Re Queen's University & C.U.P.E., Loc. 1302; Wilson grievance*, May 17, 1984. Fraser — 29 pages. (35)†

Job performance — inability to perform job; past record considered; grievance dismissed. *Re C.I.L. Inc. & E.C.W.U., Loc. 698; Norton grievance*, May 28, 1984. Solomatenko — 11 pages. (36)†

Leave of absence used to work elsewhere — leave originally obtained for family emergency — agreement specifically prohibits leaves for that purpose; grievance dismissed. *Re TRW Canada Ltd., Carr Division & U.A.W., Loc. 397; Chaggar grievance*, April 24, 1984. H. Brown — 16 pages. (37)

Possession of small amount of drugs — "de minimus" rule does not apply — company enforces strict rule; grievance dismissed. *Re Stelco Inc. & U.S.W.A., Loc. 1005; Novak grievance*, May 15, 1984. Majority: Rayner, Storie; dissent: Marshall — 10 pages. (38)

Reinstatement — grievor to be reinstated to work essentially similar to work performed prior to discharge — calculation of compensation fixed; supplementary award. *Re Nacan Products Limited & E.C.W.U., Loc. 819; Cutt grievance*, May 2, 1984. Boscariol — 9 pages. (39)†

Sexual harassment alleged — not established; grievor to be reinstated with compensation; grievance allowed. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Dufresne grievance*, May 22, 1984. Kates — 43 pages. (40)

Sleeping on job — no causal link with this incident and medication ingested; grievor had been warned on previous occasions; grievance dismissed. *Re Firestone Canada Inc. (Hamilton Plant) & United Rubber Workers, Loc. 113; Martin grievance*, May 8, 1984. R.J. Roberts — 10 pages. (41)†

Sleeping on job — past record considered; grievance dismissed. *Re NTN Bearing Mfg. Canada & U.S.W.A., Loc. 8890; Crouse grievance*, May 14, 1984. Barrett — 18 pages. (42)†

Theft alleged — pass policy irregularly applied — grievor's actions inconsistent with intent to commit theft; reinstatement with compensation. *Re Norton Canada Inc. & U.A.W., Loc. 397; MacMullen grievance*, March 5, 1984. Palmer — 8 pages. (43)

#### Discipline

Absence without leave — request for leave found to have been made informally — no definitive approval given; five-day suspension varied to written reprimand. *Re Galt-British Forge Company & U.S.W.A., Loc. 8818; Bickford grievance*, May 9, 1984. O'Shea — 11 pages. (44)

Absence without notice — breach of plant rule to notify and obtain permission for absence; written reprimand substituted. *Re Robertson Building Systems Ltd. & Int'l. Association of Bridge, Structural and Ornamental Iron Workers, Loc. 734; Allan grievance*, May 7, 1984. Hinnegan — 6 pages. (45)

Absenteeism: grievor failed to offer explanation — insufficient medical documentation; company acted on suspicion only; six-week suspension reduced to two weeks. *Re Wardair Canada Inc. & C.A.L.F.A.; Ross grievance*, March 29, 1984. Majority: Jolliffe, Morrow; dissent: Beaulieu — 27 pages. (46)





Abusive language towards supervisor alleged — supervisor's evidence preferred — previous discipline for similar conduct; three-day suspension upheld. *Re Cooper Canada Ltd. & Int'l. Woodworkers; Rodney grievance*, May 23, 1984. Brunner — 8 pages. (47)

Careless workmanship — severity of discipline influenced by separate incident of drinking in company parking lot; three-day suspension reduced to written reprimand. *Re Nestle Enterprises Ltd. & S.E.U., Loc. 183; McLean grievance*, May 9, 1984. Carter — 6 pages. (48)

Communication problems with patients — grievor did not deny statements made; statements inappropriate; grievance dismissed. *Re Wellesley Hospital & O.N.A.; Lashley grievance*, May 8, 1984. Majority: Burkett, Maguire; partial dissent: Paliare — 17 pages. (49)

Insubordination — failure to comply with request of supervisor; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A.; Smiley grievance*, April 6, 1984. P. Picher — 10 pages. (50)

Failure to notify supervisor on leaving plant — failure to sign out at gatehouse — past practice considered — no notice to grievor of change in practice; written warning substituted. *Re Bakelite Thermosets Ltd. & United Rubber Workers, Loc. 380; Rodgers grievance*, May 11, 1984. Howe, Collins, McDermott — 16 pages. (51)

Insubordination — grievor refused to follow supervisor's instructions; poor past record; suspension justified; grievance dismissed. *Re Titan Proform Company Limited & U.A.W., Loc. 124; Wazid grievance*, May 16, 1984. Beck — 8 pages. (52)

Responsibility of grievor for two accidents — penalty of suspension and demotion excessive — temporary demotion substituted. *Re Ottawa-Carleton, Regional Municipality of, & C.U.P.E., Loc. 503; Burke grievance*, May 1, 1984. Kates; partial dissent: Vice; dissent: Switzman — 13 pages. (53)

Sexual harassment alleged — isolated incident of sexual proposition to co-worker — not constituting sexual harassment — too late to change grounds to conduct unbecoming an employee; grievance allowed. *Re Ottawa, Corporation of City of, & C.U.P.E., Loc. 503; Evraire grievance*, May 25, 1984. Kates, Vice, Switzman; addendum: Vice — 15 pages. (54)\*

Sleeping on job — not proven; grievance allowed. *Re Stelco & U.S.W.A., Loc. 1005; Leduc grievance*, May 23, 1984. Majority: Kennedy, Marshall; dissent: Moran — 15 pages. (55)

#### Discrimination

Refusal of payment for days spent testifying at disciplinary hearings before College of Nurses — other nurses whose testimony supported employer's decision to discharge were paid, invidious distinction — no business purpose; grievance allowed. *Re Sudbury General Hospital of the Immaculate Heart of Mary & O.N.A.; group grievance*, May 25, 1984. M. Picher, Winkler, Mayne — 12 pages. (56)\*

#### Employment Status

Job transfer to avoid permanent employee status alleged — legitimate business reasons found — no arbitrary movement to avoid permanence found; grievance dismissed. *Re Northern Telephone Ltd. & Communications Workers of Canada; Stevens grievance*, May 16, 1984. Beck — 5 pages. (57)

No provision for temporary employees — grievor declared full-time employee with seniority dating from date of hire; grievance allowed. *Re Canadian Broadcasting Corporation & Canadian Wire Service Guild, Loc. 213; Woolway grievance*, May 16, 1984. Kennedy, Healy, Lewis — 15 pages. (58)

Regular part-time nurse — grievor deemed to be a regular, part-time nurse, not a casual one; employer deemed to have accepted her offer of commitment, given requirement for regular part-time work; grievor entitled to job; grievance allowed. *Re Stratford General Hospital & O.N.A.; Lichty grievance*, May 9, 1984. Majority: Saltman, McIntyre; dissent: MacDermid — 21 pages. (59)

Student becomes employee when ceases to attend school — grievor's intention not to return to school *bona fide*; not a student until intention changes; grievance allowed. *Re Caressant Care Nursing Home of Canada Ltd. & C.L.A.C.; Dunphy grievance*, May 14, 1984. Hinnegan — 7 pages. (60)

#### Estoppel

Prepayment of salary over vacation period — within management's discretion — no representation that practice would continue unaltered — estoppel not established; grievance dismissed. *Re Centennial College & O.P.S.E.U.; policy grievance*, April 30, 1984. Majority: Brent, Hallsworth; dissent: Kaufman — 17 pages. (61)

#### Evidence

Statements made during grievance procedure — free flow of discussion in grievance procedure paramount — all statements privileged; statements not admissible. *Re Ottawa-Carleton, Regional Municipality of, & Ottawa-Carleton Public Employees, Loc. 503; Boileau grievance*, April 4, 1984. Majority: P. Picher, Hallman; did not concur: Switzman — 8 pages. (62)\*

#### Grievance Procedure

Failure to appear at hearing — omission a result of union's carelessness as evidenced in show cause submission; grievances dismissed. *Re Toronto General Hospital & C.U.P.E., Loc. 2001; policy grievance and Cain grievance*, May 23, 1984. Majority: Carter, Coupey; dissent: Mayne — 4 pages. (63)

Timeliness — recall grievance filed seven months after grievor became aware of alleged violation and two months after general return to work — fails to meet agreement test of "reasonable promptness" or section 44(6) criteria; grievance dismissed. *Re Inco Ltd. & U.S.W.A., Loc. 6500; Bagnoral grievance*, May 17, 1984. Majority: O'Shea, Filion; dissent: Seguin — 11 pages. (64)

Timeliness — time limits mandatory — no reasonable grounds established for extension; grievance dismissed. *Re Margaret's Fine Foods Limited & Teamsters Loc. 647; Spirouski grievance*, March 30, 1984. Rayner — 18 pages. (65)

#### Holidays

Entitlement to have first working day off with pay immediately following vacation block as day in lieu of statutory holiday — established; grievance allowed. *Re Air Canada & Canadian Airline Employees; Curling grievance*, May 4, 1984. H. Brown — 12 pages. (66)

#### Holiday Pay

Declaration of day off in lieu of holiday — employer's subsequent actions overriding previous declaration; grievance allowed. *Re Tonka Corporation Canada Limited & Int'l. Molders and Allied Workers; policy grievance*, May 14, 1984. McLaren — 11 pages. (67)

Qualifying days: having a vehicle stuck in a ditch not accepted as a satisfactory excuse by employer for absence on qualifying day — duty to consider each case on its merits; grievance allowed. *Re Burns Meats Ltd. & U.F.C.W.; Pringle grievance*, May 18, 1984. Lerner — 15 pages. (68)†





### Hours of Work

Parties agreed on formula to calculate hours of work for extended tours — reduction in hours of work requires formula to be adjusted accordingly not proportionately — no new formula required; grievance dismissed. *Re Toronto General Hospital & O.N.A.; group grievance*, May 3, 1984. Majority: H. Brown, Coupey; dissent: Paliare — 26 pages. (69)

### Interest Arbitration

Wages — company offer which negotiating committee agreed to attempt to have accepted, major basis for order — economic and industry factors considered. *Re Masland Carpets of Canada Ltd. & Amalgamated Clothing and Textile Workers, Loc. 1885; interest arbitration*, April 6, 1984. Majority: O'Shea, Clark; dissent: Whittaker — 16 pages. (70)

### Job Evaluation

Introduction of additional equipment — requires simultaneous performance of duties from two groupings within classification — held to be a "material change" in job functions despite minor time span involved; grievance allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Joseph grievance*, April 30, 1984. P. Picher — 20 pages. (71)

Substantial change to duties of job of Material Handler evidencing need for new pay rate alleged — not established; grievance dismissed. *Re Somerville Belkin Industries Limited & Canadian Paperworkers, Loc. 36; policy grievance*, May 22, 1984. Majority: Brandt, Churchill-Smith; dissent: Weisbach — 13 pages. (72)

Wages — rate of pay set for Data Operator position — rate not unfair nor improper in context of classification system and salary structure; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Loc. 79; policy grievance*, May 17, 1984. Brent — 29 pages. (73)

### Job Posting

Existence of vacancy — outside employee hired temporarily; employer required to offer position to members of bargaining unit; grievance allowed. *Re Cornwall, Corporation of City of, & O.P.E.I.U., Loc. 452; policy grievance*, May 3, 1984. Emrich — 18 pages. (74)†

Full-time employee is applicant for part-time position — part-time agreement gives preference to full-time nurses; grievances allowed. *Re Sarnia General Hospital & O.N.A.; Lapointe and Association grievances*, May 28, 1984. Majority: H. Brown, Robbins; dissent: Blair — 13 pages. (75)

Grievor bumped from full to part-time position during lay-off — grievor may apply for position along with other interested parties; no entitlement to bump into vacant position; grievance dismissed. *Re Cornwall, Corporation of City of, & O.P.E.I.U., Loc. 452; Law grievance*. See (74), *supra*. (76)†

Interpretation of scope of recall rights of laid-off employees — position to be posted but laid-off employees eligible for recall to be notified of available work; grievance allowed in part. *Re Marimac Inc. (Cornwall) & Amalgamated Clothing and Textile Workers, Loc. 2343; policy grievance*, April 27, 1984. Emrich — 22 pages. (77)\*

Temporary positions should have been posted; leave of absence less than one year does not create job vacancy — no need to post vacancy; if transfer necessary position must be posted; grievance allowed. *Re Porcupine and District Children's Aid Society & C.U.P.E., Loc. 2196; policy grievance*, May 18, 1984. Betcherman — 6 pages. (78)†

### Lay-off

Cancellation of one shift of work to effect repairs to furnace upon which grievor worked — junior employee retained at work — not lay-off situation — no entitlement of grievor to work claimed; grievance dismissed. *Re Stelco Inc. (Hilton Works) & U.S.W.A., Loc. 1005; Rocchi grievance*, April 30, 1984. Majority: Kennedy, Jarvis; dissent: Marshall — 10 pages. (79)

Improper notice of lay-off — grievors to be paid in lieu of receiving notice; grievances allowed. *Re Phillips Cables Limited & U.S.W.A., Loc. 7276; Barbosa, Scalisi, Wall grievances*, May 4, 1984. Kennedy — 8 pages. (80)\*

Lay-off alleged to be improper because caused by return of foreman to bargaining unit — not established; grievance dismissed. *Re Fisher Controls Company of Canada Limited & U.A.W., Loc. 636; policy grievance*, March 26, 1984. Rayner — 11 pages. (81)

Notice while on sick leave — contract allowing for five-days work following illness prior to lay-off; grievance allowed. *Re Port Weller Dry Docks, Division of Upper Lakes Shipping & Int'l. Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Loc. 680; Johnston grievance*, May 24, 1984. Knopf — 11 pages. (82)

Qualifications — grievor's experience in job in question considered — lack of present ability within a familiarization period; grievance dismissed. *Re Diamond Canapower & U.S.W.A., Loc. 16506; Seecharan grievance*, April 10, 1984. Rayner — 11 pages. (83)

Qualifications — inability to handle psychiatric patients; grievance dismissed. *Re Mount Sinai Hospital & S.E.U., Loc. 204; Vasconcelos grievance*, May 8, 1984. Brent, Boettcher, Wright — 5 pages. (84)

Waiver — union agreed to waive right to application of standard lay-off procedure to benefit certain employee — grievor bumped on recall of the employee — no violation established; grievance dismissed. *Re Gay-Lea Foods Co-operative Limited & Milk and Bread Drivers, Loc. 647; Keleher grievance*, April 18, 1984. Gandz — 6 pages. (85)†

### Overtime

Distribution — interpretation of "currently working on the occupation and assignment" — means those normally and regularly performing work, not those who occasionally did it; grievance dismissed. *Re Dominion Textile Inc. & United Textile Workers, Loc. 468; Leger grievance*, May 23, 1984. Majority: Carter, Hamilton; dissent: Bosnich — 5 pages. (86)

Practice in calculating overtime hours — no acquiescence by senior enough union official, despite time lapse between alleged knowledge and grievance, grievance brought at first opportunity; grievance allowed. *Re Kingsway Transport & Teamsters Loc. 880; group grievance*, May 9, 1984. Majority: Hinnegan, Lamb; dissent: Mosey — 16 pages. (87)

### Overtime Pay

Entitlement — not established; credit for flight time to be distinguished from credit for pay purposes; grievance dismissed. *Re Nordair Ltee-Nordair Ltd. & C.A.L.F.A.; policy grievance*, May 15, 1984. M. Picher — 15 pages. (88)

### Premium Pay

Shift change — entitled to shift change premium where only change is start of first shift of week four hours earlier; grievance allowed. *Re Labatt's Ontario Breweries & National Brewery Workers, Loc. 1; Harvey grievance*, May 9, 1984. Weatherill — 7 pages. (89)





Some employees worked beyond conclusion of shift on half-holiday; some employees left at end of half-shift without discipline — employees working outside of regular schedule entitled to overtime; individual employees to submit claims to employer; policy grievance dismissed. *Re Hamilton Board of Education & C.U.P.E., Loc. 1344; policy grievance*, May 16, 1984. Devlin — 15 pages. (90)†

Work performed before start of regular Sunday shift deemed to be on statutory holiday — work at end of shift in excess of eight continuous hours held to be payable at overtime rates — not improper pyramiding; grievances allowed. *Re E.B. Eddy Forest Products Ltd. & Canadian Paperworkers, Locs. 33, 34, 50 & 73; Chenier and St. Jean grievances*, undated. Majority: Roine, Paxton; dissent: Laishley — 12 pages. (91)

### Procedure

Adjournment *sine die* granted on agreement of parties pending judicial review proceedings in respect to another grievance on same issue; interim award. *Re Northern Telecom Canada Limited & U.A.W., Loc. 1915; Manuel grievance*, April 30, 1984. Dunn — 3 pages. (92)

Adjournment to compel grievor to attend — union diligent in attempts to compel; adjournment granted. *Re Peel, Regional Municipality of, & I.B.E.W., Loc. 636; Wilson grievance*, May 9, 1984. Davis — 5 pages. (93)†

### Promotion

Qualifications — held to be a non-competitive clause — likelihood of grievor achieving acceptable standard within five-day training period; grievance allowed; grievor to be given trial period. *Re Domtar Forest Products, Woodlands Division & Lumber and Sawmill Workers Loc. 2693; Playle grievance*, May 18, 1984. Majority: M. Picher, Johnston; dissent: Byers — 15 pages. (94)

Qualifications — relevant experience considered; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Loc. 1535; Petz grievance*, May 15, 1984. Beck — 13 pages. (95)\*

Qualifications — skill and ability considered — more senior employee formerly demoted for inability to perform required tasks; grievance dismissed. *Re Appleton Electric Ltd. & Int'l. Molders and Allied Workers, Loc. 194; Ridout grievance*, May 7, 1984. McLaren — 9 pages. (96)

Qualifications; senior grievor approximately equal to incumbent — only qualifications relevant to job to be considered; grievor to be awarded position on basis of seniority; grievance allowed. *Re York, Regional Municipality of, & C.U.P.E., Loc. 1953; Ehlerst grievance*, May 22, 1984. Solomatenko — 21 pages. (97)†

### Recall

Entitlement — company alleged to have assigned an employee to do work he was unqualified to do while grievor who was qualified on lay-off — company did not assign such work; grievance dismissed. *Re Laidlaw Transport Limited & Canadian Transportation Workers, Loc. 188; Breckles grievance*, Feb. 15, 1984. Majority: Rayner, Bowden; dissent: Nelson — 10 pages. (98)

Improper recall alleged — company used all reasonable means to contact grievor; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Singh grievance*, May 3, 1984. Majority: Brent, Storie; dissent: Marshall — 12 pages. (99)

Junior employees recalled before senior grievor — instrument appointed receiver-manager agent of employer —

bound by collective agreement; under obligation to recall in order of seniority; grievor to be compensated for lost wages — claim for loss of tips disallowed. *Re Rockton Hotel & Hotel Employees and Restaurant Employees, Loc. 75; Patterson grievance*, May 18, 1984. Aggarwall — 25 pages. (100)†

New employee hired to perform grievor's tasks while grievor on lay-off — grievance allowed with interest. *Re Waterloo Spinning Mills Ltd. & Kraus Carpet Employees; Shayler grievance*, May 3, 1984. Majority: H. Brown, Mayne; did not concur: Redford — 57 pages. (101)

Physical ability to perform work — risk for grievor to perform other than light to medium work; grievance dismissed. *Re International Harvester Canada & U.S.W.A., Loc. 2868; Sidhu grievance*, May 7, 1984. Davis — 11 pages. (102)†

Qualifications — grievor not as qualified as employee recalled; grievance dismissed. *Re Jarvis Clark Company Limited & U.S.W.A., Loc. 7282; Levac grievance*, March 20, 1984. Majority: Rayner, Binning; dissent: Keuhl — 11 pages. (103)

Qualifications — job application form did not disclose qualifications for posted position; no previous experience — employer had no reason to know that grievor had any ability to perform job; grievance dismissed. *Re Procor Limited & Int'l. Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Loc. 75; Argenault grievance*, May 18, 1984. R.J. Roberts — 12 pages. (104)†

Strike followed by shutdown — seniority provisions temporarily superseded by agreement for purposes of restarting operations — no violation found in applying agreement; grievances dismissed. *Re Inco Ltd. & U.S.W.A., Loc. 6500; Monette, Brideaus, Langstaff and Mackenzie grievances*, April 25, 1984. Majority: O'Shea, Pigott; dissent: Aubut — 16 pages. (105)

### Reporting Pay

Plant closed due to severe snowstorm — grievor not informed and attended at plant; grievance allowed. *Re Mathews Conveyor Co. & I.A.M.; Brown grievance*, May 7, 1984. Draper — 5 pages. (106)†

### Scheduling of Work

Alteration of schedule — management may alter work schedule without penalty by giving proper notice; change in scheduling does not violate *Employment Standards Act*; grievance dismissed. *Re Union Gas Limited & E.C.W.U., Loc. 999; Robinson grievance*, May 15, 1984. Majority: Rayner, Storie; dissent: Van Rassel — 11 pages. (107)

Short notice for change in shift schedule; required to work on previously scheduled days off — acceptance of instruction to work does not constitute mutual agreement; grievance allowed. *Re Domtar Inc. & Canadian Paperworkers, Locs. 212 & 338; Beckstead grievance*, April 30, 1984. H. Brown, Byers, Paxton — 9 pages. (108)

### Seniority

Absence from work because of accident — grievor to continue to accumulate seniority credits; grievance allowed. *Re La Verendrye General Hospital & La Verendrye Hospital Employees Loc. 795; Ladouceur grievance*, May 11, 1984. Phillips — 10 pages. (109)†

Bumping rights — bumping rights applying to other classifications only for lay-off and not for overtime assignments; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Loc. 414; Peters and Wulff grievances*, May 8, 1984. O'Shea — 12 pages. (110)†





Departmental seniority — not applicable where employees post to another department; grievance dismissed. *Re Kodak Canada Inc. & Employees' Association of Kodak Canada; union grievance*, May 28, 1984. Devlin — 11 pages. (111)†

Qualifications — grievor visually handicapped — would impede efficiency; handicap prevents her from having ability to perform work; no previous secretarial experience; no obligation to train; grievance dismissed. *Re Peace Bridge Area Association for the Mentally Retarded & C.U.P.E., Loc. 2276; Crockett grievance*, May 11, 1984. O'Shea — 14 pages. (112)†

Transfer back into unit from management — transfer to subsidiary not affecting seniority rights; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Loc. 1525 — Hamilton intervener; policy grievance*, April 19, 1984. M. Picher — 48 pages. (113)

### Sick Leave

Absence on Workmen's Compensation for entire year — according to agreement grievor entitled to vacation pay at previous rate — entitled to pay for sick leave credits and floating holidays (not scheduled holidays); grievance allowed in part. *Re Martin-Brower of Canada Ltd. & Teamsters Loc. 419; Kirk grievance*, April 18, 1984. O'Shea — 18 pages. (114)†

Entitlement to sick-leave credit established for teacher on sabbatical leave — grievor estopped from claiming because of terms of his leave agreement; grievance dismissed. *Re Cochrane-Iroquois Falls Board of Education & O.S.S.T.F., District 54; Turner grievance*, April 12, 1984. Majority: Duchesneau-McLachlan, McNeil; dissent: Papineau — 14 pages. (115)

Return to work: grievor sent home for improper notification of intent to return to work after illness — no evidence of timely notification; grievance dismissed. *Re E.B. Eddy Forest Products Ltd. & Canadian Paperworkers, Locs. 33, 34, 50 & 73; St. Jean grievance*, undated. Majority: Roine, Laishley; dissent: Paxton — 6 pages. (116)

### Sick Pay

Written explanation of absence required — not unreasonable; change from an oral explanation not a violation of agreement to continue current practices under benefit plan; grievances dismissed. *Re Western Grocers, Division of Westfair Foods Ltd. & Retail Clerks Union, Loc. 409; Smallwood et al grievances*, May 4, 1984. Aggarwal — 29 pages. (117)†

### Technological Change

Transfer due to technological change — option to choose termination allowance — not restricted to transfers to different localities or classifications; grievance allowed. *Re Bell Canada & Communications Workers; Biggs and Anderson grievance*, May 17, 1984. P. Picher, Sinclair, Robbins — 20 pages. (118)

### Transfer

Entitlement — company's sole reliance on psychological aptitude tests insufficient where relevant factors are ability, knowledge, training and skill with respect to job sought — matter referred back to employer for reconsideration; grievances allowed in part. *Re Falconbridge Nickel Mines Limited & Sudbury Mine, Mill and Smelter Workers, Loc. 598; Leclerc and Richards grievances*, May 17, 1984. Majority: Kennedy, Wakely; dissent: McIntyre — 25 pages. (119)

Physical disability given as reason for reassignment to different work location — employer's concerns based on subjective assessment of performance of peripheral tasks — constitutes discrimination in violation of *Human Rights Code*; grievance allowed. *Re Wentworth County Board of Education & C.U.P.E., Loc. 1572 (Clerical Unit); Speight grievance*, May 3, 1984. Devlin — 25 pages. (120)\*†

### Union Officials

Super-seniority — purpose of super-seniority not to protect wages of union officials; super-seniority utilized only to keep union president within plant — unless crisis occurs personal seniority utilized first; grievance dismissed. *Re Westinghouse Canada Inc. & U.E., Loc. 546; Ford grievance*, May 16, 1984. Barton — 9 pages. (121)†

### Union Rights

Leave of absence to attend union conference refused — interpretation of "reasonable periods" includes right to refuse leave altogether at busy periods — duty to seek alternative staffing; declaration that agreement violated. *Re Canadian Timken Ltd. & U.S.W.A.; Saris grievance*, Feb. 27, 1984. Rayner — 10 pages. (122)

### Vacations

Employees required to take vacation in lieu of lay-off — affected senior employees — company has right to schedule time of vacations; grievance dismissed. *Re Barton Tubes Limited & U.S.W.A., Loc. 14162; employee grievance*, April 12, 1984. H. Brown — 11 pages. (123)†

Entitlement — vacation period determined by years of employment; employment relationship begins date of hire, not date of acquisition of full-time status — grievor entitled to three weeks vacation; grievance allowed. *Re St. Joseph's Villa & C.U.P.E., Loc. 2717; Andrews grievance*, May 15, 1984. Emrich — 14 pages. (124)†

Rescheduling on short notice due to production requirements — management right reserved in memorandum of understanding; grievance dismissed. *Re Uniroyal Ltd. (Kitchener) & United Rubber Workers, Loc. 80; policy grievance*, May 10, 1984. Devlin — 8 pages. (125)†

### Wages

Employer found in breach of memorandum of agreement concerning reduction of wage increase to comply with directives of Anti-Inflation Board — quantum of damages fixed — interest not awarded; supplementary award. *Re Ferranti-Packard Limited & U.S.W.A., Loc. 5788; group grievance*, May 22, 1984. Brunner; partial dissents: Gilmore, MacKenzie — 16 pages. (126)

Calculation — clerical error caused overpayment of salary — mistake of law — employer entitled to reclaim the excess payment; grievance dismissed. *Re Carleton Board of Education & O.S.S.T.F., District 43 and L'Association des Enseignants Franco-Ontariens, Carleton; Osterer grievance*, May 4, 1984. Adams, Joyce, Nelligan — 6 pages. (127)

Calculation of flight-time credits — grievors not pay-protected for missed connection — not working as members of designated crew on return flight; grievance dismissed. *Re Air Canada & C.A.L.F.A.; Rhodes and group grievance*, May 1, 1984. Brunner — 10 pages. (128)

Education allowances — courses taken relevant to job but not specifically nursing courses; grievances dismissed. *Re Royal Ottawa Hospital & O.N.A.; Sherman and MacNeil grievances*, April 6, 1984. Majority: M. Picher, Baldwin; dissent: McIntyre — 12 pages. (129)





Incentive pay — company unilaterally raising standard for production to be exceeded for payment of incentive pay — no estoppel established; grievances denied. *Re Rockwell International of Canada Ltd. & U.A.W., Loc. 127; group grievances*, April 27, 1984. Samuels — 9 pages. (130)

#### Welfare Plans

Death benefits — calculation based on salary at time of death, not time of last active duty; grievance allowed. *Re Cambridge, Corporation of City of, & Cambridge Professional Firefighters, Loc. 499, I.A.F.F.; Gimmer Estate grievance*, May 17, 1984. Kates — 11 pages. (131)

Entitlement of seasonal employee — member of bargaining unit; past practices considered in retroactively applying benefits; grievance allowed. *Re Standard Commercial Tobacco Company of Canada Ltd. & C.U.O.E.; Mellow grievance*, April 28, 1984. Rayner — 14 pages. (132)

Weekly-indemnity plan — benefits cut off according to policy when payments made under Quebec Motor Vehicle Fund — employer's obligation only to provide policy — in any case employee has been indemnified; grievance dismissed. *Re E.B. Eddy Forest Products Ltd. & Canadian Paperworkers, Locs. 33, 34, 50 & 73, Brunet grievance*, undated. Majority: Roine, Laishley; addendum: Laishley; dissent: Paxton — 15 pages. (133)

#### Work Assignment

Employer not entitled to schedule grievors on rotating shifts from fixed shifts unless mutually agreed — consent not unreasonably withheld; grievances allowed. *Re Collingwood General and Marine Hospital & S.E.U., Loc. 204; group grievances*, May 11, 1984. Adams, Cancilla, McDonald — 10 pages. (134)

Employer refusing to assign male nursing attendants to care for personal hygienic needs of female patients; not discriminatory practice; grievance dismissed. *Re Timmins, Corporation of City of, (Timmins Home for the Aged) & C.U.P.E., Loc. 1170; Breux grievance*, April 30, 1984. Sheppard — 14 pages. (135)†

Non-bargaining unit employees performing bargaining-unit jobs — owner-operators allowed to work during lay-off; grievance allowed. *Re High-Tech Express and Distribution & Teamsters Loc. 49; policy grievance*, May 14, 1984. Foisy — 14 pages. (136)†

Nursing attendants reassigned to different wards — hospital policy to upgrade patient care; more qualified nurses to deal directly with patients; nursing attendants given opportunity to upgrade qualifications; union given notice of hospital's intentions; reassignment not unjust; grievances dismissed. *Re Riverdale Hospital & C.U.P.E., Loc. 79; policy grievances*, May 2, 1984. Kates — 13 pages. (137)

Overwork alleged to demonstrate job vacancy requiring posting — not established; grievance dismissed. *Re Labatt's Ontario Breweries & National Brewery Workers, Loc. No. 1; policy grievance*, April 13, 1984. Rayner — 10 pages. (138)

Performance of work normally done by bargaining-unit members — irrelevant that it was a reversion to pre-collective agreement situation; grievance allowed. *Re South Centennial Manor & O.N.A.; group grievance*, May 10, 1984. Majority: H. Brown, Mayne; dissent: Carrier — 14 pages. (139)

Teaching hours — no comparative evidence presented — no way of ascertaining relative workloads; grievance dismissed. *Re Fanshawe College & O.P.S.E.U.; Kuhn grievance*, April 9, 1984. O'Shea, Hatch, McManus — 17 pages. (140)

Temporary transfer alleged — realignment of assigned tasks for production efficiency — proper exercise of management right; grievance dismissed. *Re Sivaco Ontario, Ingersoll, Division of Avaco Inc. & United Cement Workers, Loc. 527; Honsberger grievance*, April 2, 1984. Palmer, Bezecky, Werry — 7 pages. (141)

#### Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the month of April, 1984.

##### Collection

Non-union employees used — employer not present at hearing — order to pay wages to union. *Re 384368 Ontario Ltd., o/a Thunderhawk Developments & U.B.C.J.A., Loc. 1669; union grievance*, March 6, 1984. Satterfield, Hershkovitz, Ronson — 4 pages. (142)

##### Collective Agreement

Employer not bound by agreement on low-rise residential agreement — not included in ICI sector — previous limitation on bargaining rights continues; grievance dismissed. *Re H.G. Francis and Sons Ltd. & Sheet Metal Workers, Loc. 47; union grievance*, March 26, 1984. Satterfield, Stamp, Cooke — 15 pages. (143)

##### Procedure

Arrest warrants sought — need for caution — not issued where prospective witnesses were paid conduct money by cheque. *Re Masonry Contractors Association of Toronto Inc. and Acadian Bricklayers Ltd. & Bricklayers' Masons' Independent Union, Loc. 1; union grievance*, March 26, 1984. Springate, Murray, Ballentine — 2 pages. (144)

##### Related Employer

Related development company engaged in construction for own use — need to prevent erosion of bargaining rights; grievance allowed. *Re Lavern Construction Co. Ltd. and 506162 Ontario Ltd., c.o.b. as LCM Developments Ltd. & U.B.C.J.A., Loc. 2486; union grievance*, March 20, 1984. Franks, Stamp, Ballentine — 4 pages. (145)

##### Work Assignment

Employer hired owner-operator who had not entered into collective agreement with union; irrelevant that union refused to do so; grievance allowed; declaration, compensation and cease and desist order. *Re Arlington Crane Services Ltd. & I.U.O.E. Loc. 793; union grievance*, March 5, 1984. Furness, Cooke, Murray — 9 pages. (146)

Claim that bargaining-unit work improperly assigned to members of another union — essentially a jurisdictional dispute; grievances not arbitrable — board defers to collective agreement method of resolving such disputes. *Re Electrical Power Systems Construction Association and Ontario Hydro & I.B.E.W. Electrical Power Systems Construction Council of Ontario; union grievances*, March 27, 1984. Howe, Wilson, Ballentine. — 14 pages. (147)

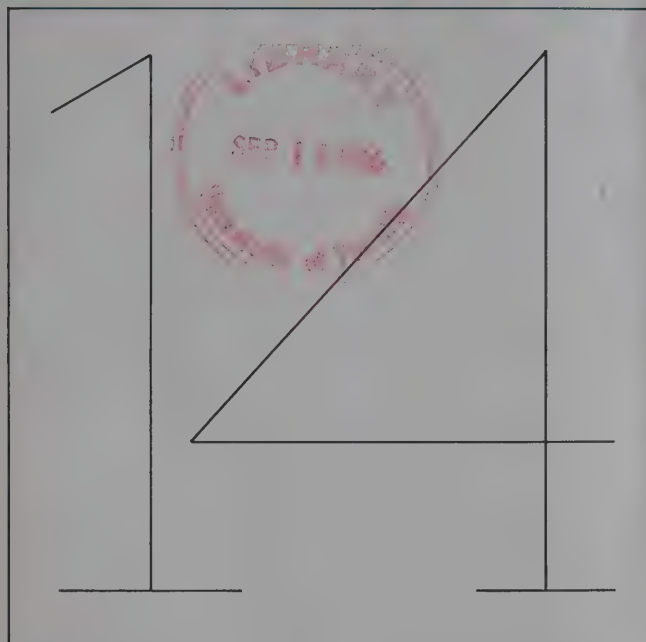
##### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.





# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1979, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Arbitrators

The following people have been removed from the Minister of Labour's panel of available arbitrators:

### George W. Adams

Mr. George Adams has advised that he will no longer be acting as a full-time arbitrator following his return to the practice of Law.

## Professor Harry Arthurs

Professor Harry Arthurs has been appointed as President of York University and will be unavailable for arbitration during his term of office.

## Professor Stanley Beck

Professor Stanley Beck has accepted a three-year term as Chairman of the Ontario Securities Commission and, therefore, will be unavailable for arbitration during this time.

## Judge William H. Fox

It is with regret that we must advise of the death of Judge William H. Fox. Judge Fox has been a respected arbitrator since 1970 and will be missed by the labour relations community.

.....  
**Ms. Gail Brent** has advised that she will be on vacation during the month of July 1985 and will, therefore, not be available to attend arbitration hearings during that time.

**Professor Donald Fraser** has advised of a change of telephone number, as follows: (613) 225-7570. All calls with regard to arbitration should be made to this number.



## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of June, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

### Arbitrability

Allegation that teaching-hour maximums exceeded — estoppel not applicable; grievance arbitrable. *Re Confederation College & O.P.S.E.U.; Seely grievance*, June 18, 1984. Majority: Burkett, Beaulieu; dissent: Courtney — 23 pages. (1)

Previous grievance on same subject matter unresolved — present grievance arbitrable. *Re Port Arthur Shipbuilding & U.S.W.A., Loc. 5055; Union grievance*, May 30, 1984. Aggarwal — 18 pages. (2)†

### Classification

Agreement to review job — honestly held judgment not to upgrade; grievance dismissed. *Re North York General Hospital & O.N.A.; policy grievance*, June 14, 1984. Carter, McIntyre, Rundle — 6 pages. (3)

Change of job duties — amounting to temporary transfer to higher classification; grievances allowed. *Re Sheldons Engineering Ltd. & U.S.W.A., Loc. 2391; Howlett et al grievances*, June 5, 1984. R.J. Roberts — 9 pages. (4)†

### Collective Agreement

Effect of *Inflation Restraint Act* upon expiry of collective agreement — rates dictated by statute continue to operate; grievance dismissed. *Re West End Creche Child and Family Clinic & C.U.P.E., Loc. 2132; union grievance*, June 25, 1984. Devlin — 7 pages. (5)†

Retroactivity of provision freezing further job applications — not retroactive; grievor to be compensated for company's failure to accept his applications. *Re Bell Canada & Communications Workers; Pereira grievance*, May 30, 1984. Majority: M. Picher, Robbins; dissent: Filion — 22 pages. (6)\*

Unilateral introduction of productivity sharing plan — incompatible with wage structure established by collective agreement; grievance allowed. *Re Alcan Building Products & U.A.W., Loc. 27; union grievance*, June 19, 1984. Majority: Brunner, Marshall; dissent: Donnelly — 15 pages. (7)\*

### Contracting Out

Right to contract out not altered by letter of understanding — grievance dismissed. *Re Preston Springs Gardens Retirement Home & H.O.P.E., Loc. 206; union grievance*, June 5, 1984. Lerner — 26 pages. (8)†

### Demotion

Departmental reorganization — no abuse of employer's discretion; grievance dismissed. *Re Atomic Energy of Canada Limited & Society of Professional Engineers; Lee grievance*, June 18, 1984. M. Picher — 16 pages. (9)

Grievor returned to former classification — unable to perform new job satisfactorily; grievance dismissed. *Re De Havilland Aircraft of Canada Limited & U.A.W., Loc. 673; Masterton grievance*, June 13, 1984. Gorsky — 10 pages. (10)

Incompetency alleged — performance standards excessive; grievor meeting academic and work-related requirements of

job; grievance allowed. *Re Ottawa Civic Hospital & C.U.P.E., Loc. 576; Long grievance*, June 4, 1984. Majority: Kates, Mosse; dissent: Bentley — 19 pages. (11)

### Discharge

Absence as the result of an accident; insufficient communication — reinstated without compensation but with seniority and benefits. *Re Metropolitan Toronto, Municipality of & C.U.P.E.; Lewkowicz grievance*, June 5, 1984. P. Picher, Beresford, Lewis — 18 pages. (12)

Absence without notice — failure to notify of an absence; grievor physically capable of notifying; grievance denied. *Re Sheller-Globe Steering Wheel Division Brampton Plant & U.A.W., Loc. 1285; Green grievance*, June 27, 1984. Brent — 10 pages. (13)

Absenteeism — absences likely to continue for medical reasons; grievance dismissed. *Re Crothers Limited & U.A.W.; MacPherson grievance*, June 25, 1984. Majority: Weatherill, Bertuzzi; dissent: Bruce — 8 pages. (14)

Absenteeism and lateness — absenteeism policy administered on basis of incentives, not progressive discipline; 5-day suspension substituted. *Re 7-11 Pools and Metalfab Limited & Labourers, Loc. 183; Smart grievance*, June 11, 1984. M. Picher — 18 pages. (15)†

Absenteeism because of illness — trial period not interrupting continuing absence; absence for 20 months terminating employment; grievance dismissed. *Re Lancia-Bravo Foods & U.F.C.W.U., Loc. PH30-2; Piuanno grievance*, May 28, 1984. Brandt — 21 pages. (16)

Absenteeism resulting from alcoholism — progressive discipline applied; grievance dismissed. *Re Whitby, Corporation of Town of, & C.U.P.E., Loc. 53; Young grievance*, June 21, 1984. Boscarior — 12 pages. (17)†

Abuse of resident alleged — grievor acted immaturely and without malice; conditional reinstatement without compensation. *Re Ongwanada Hospital & O.P.S.E.U.; Harmsen grievance*, June 18, 1984. Teplitsky, Wakely, Millard — 4 pages. (18)

Abuse of sick leave — grievor working elsewhere while on sick leave; grievance dismissed. *Re Pamour Porcupine Mines Ltd. & U.S.W.A., Loc. 4440; Boudreau grievance*, June 18, 1984. Adams — 7 pages. (19)

Assault upon fellow employee — poor work record; ongoing problem with work relationships; grievance dismissed. *Re Globe and Mail & Southern Ontario Newspaper Guild; Pederson grievance*, June 19, 1984. Kennedy — 18 pages. (20)

Careless driving — lengthy suspension appropriate; reinstatement without compensation. *Re Carrier Canada Ltd. & Sheet Metal Workers, Loc. 575; Wishlow grievance*, June 7, 1984. Gandz — 8 pages. (21)†

Culminating incident; insubordination — personal strain in employee's life; reinstatement without compensation. *Re Canada Post Corporation & C.U.P.W.; Themeliopoulos grievance*, June 20, 1984. P. Picher — 23 pages. (22)

Culminating incident; unauthorized break in an unauthorized area — penalty not justified in light of past record and in comparison with fellow employee; suspension substituted. *Re Peel Memorial Hospital & S.E.U., Loc. 204; Anderson grievance*, June 14, 1984. H. Brown — 13 pages. (23)†

Dishonesty — grievor's conduct tantamount to theft; grievance dismissed. *Re Elizabeth Bruyere Health Centre & C.U.O.E., Loc. 111; Brulé grievance*, June 21, 1984. Carrothers — 7 pages. (24)†

Dishonesty — punching of another employee's time card — previous conduct not relevant; reinstatement without compensation. *Re John Krautwurst Furniture Ltd. and Rebu'h Furniture (1983) Inc. & Int'l. Woodworkers, Crognale grievance*, June 13, 1984. Adams, MacLeod, Chalmers — 5 pages. (25)

Dishonesty and wilful neglect alleged — grievor merely sloppy; reinstatement without compensation. *Re Dixon Fuels, Division of Ultramar Canada Inc. & Teamsters, Loc. 352; Kehler grievance*, June 15, 1984. Betcherman — 8 pages. (26)†

Failure to follow established procedures — culminating incident — just cause not established; grievance allowed. *Re Humber College of Applied Arts and Technology & O.P.S.E.U.; Ransom grievance*, May 31, 1984. Majority: H. Brown, Robbins; dissent: Shields — 45 pages. (27)

Failure to record sales — previous incidents; grievance dismissed. *Re Loews Toronto Hotel Limited (Loews Westbury Hotel) & Hotel, Restaurant and Cafeteria Employees, Loc. 75; Soteropoulos grievance*, May 31, 1984. Majority: Brunner, Storie; dissent: Tate — 34 pages. (28)

Failure to report absence — no reasonable excuse and company entitled to terminate under terms of collective agreement; grievance dismissed. *Re Fortune Footware, Division of Susan Shoe Industries Limited & United Textile Workers, Loc. 369; Giordano grievance*, May 29, 1984. Barrett — 8 pages. (29)†

Improper redirection of mail alleged — allegation established; grievance dismissed. *Re Canada Post Corporation & C.U.P.W.; Cameron grievance*, May 31, 1984. P. Picher — 19 pages. (30)

Probationary employee — unsuitability established; non-compliance with procedural requirement — not justifying modification of termination; grievance dismissed. *Re Red Oak Inn & Hotel and Restaurant Employees and Bartenders, Loc. 604; Ramsay grievance*, June 27, 1984. Emrich — 26 pages (31)†

Setting of fires alleged — grievor responsible but not in culpable or criminal sense; grievance dismissed. *Re Hotel Dieu of St. Joseph of the Diocese of London, (Religious Hospitallers of) & S.E.U., Loc. 210; Wilson grievance*, June 22, 1984. Kennedy, Bartlet, Lewis; addendum: Lewis — 37 pages. (32)

Sexual abuse of patient and insubordination alleged — sexual assault not established but insubordination present; one-week suspension substituted for discharge. *Re Wellesley Hospital & S.E.U., Loc. 204; Bugtong grievance*, May 17, 1984. Majority: Adams, McDonald; dissent: Wright — 29 pages. (33)

Insubordination — no progressive disciplinary procedure in place; reinstatement without compensation substituted. *Re Emery Industries Ltd. & Teamsters Chemical, Energy and Allied Workers, Loc. 1552; Ross grievance*, June 18, 1984. H. Brown — 11 pages. (34)

Theft alleged — incident established; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; Jones grievance*, May 31, 1984. Majority: Hinnegan, Blair; dissent: Dunn — 18 pages. (35)

Theft of employer's property — grievor's testimony not credible — not an isolated instance — grievor not candid at hearing; grievance dismissed. *Re C & C Yachts Manufacturing Limited & United Brotherhood of Carpenters and Joiners, Loc. 2737; Schooley grievance*, May 3, 1984. Majority: Teplitsky, White; dissent: Marsall — 4 pages. (36)

Unauthorized removal of food from company premises — culminating incident; grievance dismissed. *Re Ontario Jockey Club & Hotel Employees, Restaurant Employees, Loc. 75; Colpitts grievance*, May 30, 1984. Egan — 6 pages. (37)†

Unauthorized removal of property from employer's premises — not established; reinstatement with compensation. *Re Third Dimension Manufacturing Limited & Intl. Ladies' Garment Workers; Ubogi grievance*, June 7, 1984. R.M. Brown — 14 pages. (38)

Unsatisfactory work performance & absenteeism — culminating incidents not established; reinstatement with compensation. *Re Courtice Steel Ltd. & U.S.W.A., Loc. 8635; Lesnick grievance*, June 6, 1984. Barrett — 12 pages. (39)†

Work performance — culminating incident; progressive discipline applied; grievance denied. *Re Morton Chemical Ltd., Ajax, & U.S.W.A., Loc. 16502; Latta grievance*, June 20, 1984. Devlin — 15 pages. (40)†

Work performance unsatisfactory — established; grievance dismissed. *Re Canadian National Institute for the Blind & Canadian Union of Blind and Sighted Merchants, Loc. 681; Vandale grievance*, May 31, 1984. Duchesneau-McLachlan — 11 pages. (41)†

Work performance — progressive disciplinary response not taken by employer; three-day suspension substituted. *Re Spaulding Fibre of Canada Ltd. & I.A.M., Loc. 2511; Kozell grievance*, June 20, 1984. Kennedy — 9 pages. (42)

### Discipline

Absence without notice — employer entitled to notification; grievance dismissed. *Re Isabelle Brothers Limited & Lumber and Sawmill Workers, Loc. 2995; Vachon grievance*, June 15, 1984. Duchesneau-McLachlan — 3 pages. (43)†

Absence without notice — no investigation by employer; 5-day suspension substituted to 3-day suspension. *Re Isabelle Brothers Limited & Lumber and Sawmill Workers, Loc. 2995; Belanger grievance*, June 15, 1984. Duchesneau-McLachlan — 4 pages. (44)†

Bar against working in unsupervised position for twelve months — discipline appropriate; grievance dismissed. *Re Sudbury, Regional Municipality of & C.U.P.E., Loc. 6; Helm grievance*, May 18, 1984. Duchesneau-McLachlan — 7 pages. (45)†

Breach of company safety standards for parking of vehicles alleged — situation required exercise of judgment; no breach of rule; grievance allowed. *Re Bell Canada & Communications Workers; Summerhayes grievance*, June 4, 1984. Majority: Burkett, Beaulieu; dissent: Filion — 12 pages. (46)

Careless workmanship — no resulting change; misapprehension of the facts by the employer; one-week suspension substituted. *Re Firestone Steel Products of Canada & U.A.W., Loc. 27; Horvath grievance*, June 14, 1984. Teplitsky — 4 pages. (47)



Insubordination alleged — use of foul language during an interview, duration of behaviour brief and not public; grievance allowed. *Re Westinghouse Canada Inc. & U.E., Loc. 504; Guthro grievance*, June 25, 1984. Weatherill, Davidson, Coupey — 13 pages. (48)\*

Insubordination: failure to complete assigned work — request a reasonable one; grievance dismissed. *Re Joseph Brant Memorial Hospital & C.U.P.E., Loc. 1065; Perrie grievance*, June 25, 1984. Majority: Furness, Clarkson; did not concur: Switzman — 19 pages. (49)

Insubordination: failure to comply with order — grievor aware of what was expected of him; grievance dismissed. *Re Fort Erie, Corporation of Town of, & C.U.P.E., Loc. 714; Johnson grievance*, June 18, 1984. McKechnie — 9 pages. (50)†

Fraudulent conduct — suspension appropriate — demotion inappropriate; grievance allowed in part. *Re Canada Post Corporation & Public Service Alliance; Burke grievance*, June 20, 1984. Kates — 18 pages. (51)

Memorandum from supervisor placed in personnel file — employer undertaking that memorandum not disciplinary; grievance dismissed. *Re Dufferin-Peel Roman Catholic Separate School Board & C.U.P.E., Loc. 1483; Haist grievance*, June 19, 1984. Black — 8 pages. (52)†

Negligence resulting in an accident — contravention of safety policy proven by employer; grievance denied. *Re Bonnechere Manor (Corporation of County of Renfrew) & C.U.P.E., Loc. 1508; Agnel and Forrest grievances*, June 21, 1984. Pyle — 10 pages. (53)†

Unauthorized absence — refusal to sign form acknowledging proof of attendance at physician's office — management acting reasonably; grievance dismissed. *Re Trane Company of Canada Ltd. & U.E., Loc. 512; Kinszky grievance*, June 26, 1984. Wilson — 9 pages. (54)†

### Estoppel

Settlement of earlier grievance and subsequent conduct of employer creating estoppel — grievance allowed. *Re Molson's Brewery (Ontario) Limited & Canadian Brewery Workers, Loc. 306; Spoeltman grievance*, June 2, 1984. Beck — 16 pages. (55)\*

Termination of estoppel — estoppel ordered by subsequent representations; grievance allowed but compensation limited to one-half of the loss. *Re House of Braemore & Upholsterers' Int'l. Union; Allamby grievance*, May 29, 1984. Majority: P. Picher, Sanders; dissent: Earle — 38 pages. (56)\*

### Grievance Procedure

Payment of employees for discussing or filing grievance — no entitlement; grievance dismissed. *Re Camco Inc. & U.E., Loc. 550; union grievance*, June 5, 1984. Baum — 12 pages. (57)†

### Holidays

Scheduled day-off and holiday coinciding — grievor considered to have received scheduled day-off; grievance dismissed. *Re Canadian Red Cross Society (Blood Transfusion Service) & Canadian Red Cross Blood Transfusion Service Employees; Beckles grievance*, June 6, 1984. Majority: MacDowell, Filion; dissent: Simpson — 21 pages. (58)\*

### Holiday Pay

Holiday occurring after commencement of sick leave — grievor entitled to difference between sickness and accident benefits and regular rate; grievance allowed. *Re Holmes Insulations Inc. & Holmes Insulations Unit, Loc. 456, U.A.W.; Smith grievance*, June 11, 1984. Brent — 6 pages. (59)

"Statutory holiday" — term embracing holidays other than those provided by *Employment Standards Act*; entitlement to pay for Civic Holiday; grievance allowed. *Re Hiway Market Ltd. & R.C.I.V., Loc. 206; union grievance*, May 31, 1984. Majority: Verity, Rudrum; dissent: White — 11 pages. (60)

### Illness

Return to work — employer did not have sufficient grounds to refuse to employ grievor; compensation without interest ordered. *Re Belleville General Hospital & S.E.U., Loc. 183; Young grievance*, May 25, 1984. Majority: Adams, Solberg; dissent: Mustard — 14 pages. (61)

Return to work — grievor partially responsible for delay in return; partial compensation. *Re C.I.P. Inc. & Canadian Paperworkers, Loc. 949; Blake grievance*, June 26, 1984. Burkett — 18 pages. (62)

### Job Evaluation

Minor alteration in job — re-evaluation not required; grievance dismissed. *Re Timmins, Corporation of City of & C.U.P.E., Loc. 210; group grievance*, June 14, 1984. Wilson — 4 pages (63)†

### Job Posting

Selection of applicants from outside bargaining unit — applicants from another bargaining unit of same employer; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Loc. 1000; group grievance*, June 19, 1984. Majority: Brent, Abbott; dissent: McCullough — 19 pages. (64)

### Job Vacancy

Existence of vacancy — duties distributed among employees; grievance allowed. *Re Red Lake Margaret Cochenour Memorial Hospital & C.U.P.E., Loc. 1758; union grievance*, June 6, 1984. McLaren — 29 pages. (65)

Redistribution of work amongst an enlarged group — no prior derogation, vacancy to be posted but no compensation to be paid. *Re Red Lake Cochenour Memorial Hospital & C.U.P.E., Loc. 1758; union grievance*, June 27, 1984. McLaren — 29 pages. (66)

### Lay-Off

Bumping rights — grievor entitled to bump into formerly-held occupation even though he had not performed specific job and required training; grievance allowed. *Re Northern Telecom Canada Limited & U.A.W., Loc. 1535; Powney grievance*, May 31, 1984. M. Picher — 32 pages. (67)

Bumping rights — no right to bump up; grievance dismissed. *Re Diamond Canapower Ltd. & U.S.W.A., Loc. 16506; Lakhian grievance*, June 19, 1984. Knopf — 6 pages. (68)†

Entitlement to benefits — no entitlement to vacation pay, statutory holidays or sick-pay credits; grievance dismissed. *Re Monarch Fine Foods Co. Ltd. & Milk and Bread Drivers, Loc. 647; Bond grievance*, May 29, 1984. Samuels, Weir, McRae — 8 pages. (69)

Hiring of students while other employees on lay-off — right to hire summer students overriding recall rights of temporary employees; employer not entitled to terminate summer students without regard to relative length of service; grievances allowed in part. *Re Ontario Hydro & C.U.P.E., Loc. 1000; grievances T-620, T-639, NT-241, NT-242, NT-244, WS-564*; June 22, 1984. Majority: Arthurs, McHenry; partial dissent: McCullough — 52 pages. (70)

Improper bumping up alleged — company not required to retain journeyman millwright in preference to qualified millwright; grievance dismissed. *Re Beachville Ltd. & E.C.W.U., Loc. 32; Brodeur grievance*, June 25, 1984. H. Brown — 14 pages. (71)

Machinery breakdown; employees told not to report for work — lay-off procedure applicable; grievance allowed. *Re MacMillan Bathurst Inc. & Int'l. Woodworkers, Loc. 2-242; union grievance*, June 12, 1984. Davis — 9 pages. (72)\*†

Qualifications — grievor refusing to take test; qualifications not established; grievance dismissed. *Re Collingwood Shipyards, Division of Canadian Shipbuilding and Engineering Limited & U.S.W.A., Loc. 8234; Simonato grievance*, June 12, 1984. Black — 10 pages. (73)\*†

Rights of full-time and part-time employees — part-time employees not to be retained on work within full-time unit if full-time employees on lay-off; grievances allowed. *Re Sunbeam Home & London & District Service Workers, Loc. 220; four grievances concerning lay-off*, June 27, 1984. Black — 18 pages. (74)†

### Overtime

Distribution — improper assignment; grievance allowed. *Re Timmins, Corporation of City of & C.U.P.E., Loc. 210; Taylor grievance*, June 14, 1984. Wilson — 4 pages. (75)†

Distribution — overtime sufficiently regular as to constitute "planned overtime work"; grievance allowed. *Re Coca-Cola Ltd. & Soft Drink Workers Joint Local Executive Board; Bruyee and McKaye grievance*, June 18, 1984. Adams — 11 pages. (76)

Distribution — result of a careless error; grievor having received his fair share spread out evenly throughout time period; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited & United Brewery Workers, Loc. 304; Comport grievance*, June 19, 1984. Barton — 6 pages. (77)

Distribution — work performed by non-working supervisor; grievance allowed. *Re Timmins, Corporation of City of & C.U.P.E., Loc. 210; Poirier grievance*, June 14, 1984. Wilson — 3 pages. (78)†

### Pensions

Existence of cap upon credited service — negotiating history indicating cap retained; grievance dismissed. *Re Wallace Barnes Co. Ltd., Associated Spring Barnes Group & U.S.W.A., Loc. 8671; policy grievance*, June 15, 1984. Wightman — 14 pages. (79)

Past service extrinsic evidence admitted; past service including all years of service and not just years during which employees contributed to pension plan; grievance allowed. *Re York, Corporation of Borough of & C.U.P.E., Loc. 103; union grievance*, June 8, 1984. Foisy — 14 pages. (80)\*†

### Premium Pay

Calculation of call-back premium — no entitlement to be paid for both hours worked and guaranteed hours; grievances dismissed. *Re Timmins, Corporation of City of & C.U.P.E., Loc. 210; Ivanacic et al. grievances*, June 27, 1984. Majority: Dunn, Rukavina; dissent: DeGurse — 5 pages. (81)

Work performed on both statutory holiday and scheduled day off — agreement providing that no "pyramiding with respect to any other premiums"; grievance dismissed. *Re Metropolitan General Hospital, Windsor, & O.N.A.; group grievance*, May 30, 1984. Majority: Teplitsky, Winkler; dissent: Robbins — 8 pages. (82)

### Probationary Employee

Grievor hired back into bargaining unit — not a probationary employee; no cause for discharge; grievance allowed. *Re Krueger Air (Canada) Industries (Successor to "Termico Manufacturing Limited") & Sheet Metal Workers' Int'l. Association, Loc. 540; Mueller grievance*, June 18, 1984. Solomatenko — 12 pages. (83)\*†

### Procedure

Notice of hearing — notice to receiver sufficient where employer insolvent; employer liable for wages, union dues, and welfare plan contributions. *Re Arthur R. Ball Company Limited, Frank Risman Associates (Canada) Limited & Upholsterers' Int'l. Union, Loc. 30; union grievance*, May 31, 1984. Betcherman — 6 pages. (84)†

### Promotion

Assessment of grievor's ability required after a suitable period of training — performed fairly and in good faith by employer; grievance denied. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Loc. 279; Ladage grievance*, June 11, 1984. Majority: Fraser, Harnden; dissent: Emond — 7 pages. (85)

Entitlement of full-time nurses to part-time positions — full-time nurses to have priority. *Re Laurentian Hospital, Sudbury; General Hospital, Sudbury; General Hospital, Sault Ste. Marie & O.N.A.; McKinnon, Emblin, Murray et al. grievances*, May 14, 1984. Majority: Teplitsky, Winkler; addendum: Winkler; partial dissent: McIntyre — 21 pages. (86)

Qualifications — aptitude test not objective; grievor meeting threshold requirements; grievance allowed. *Re Thunder Bay, Corporation of City of & C.U.P.E., Loc. 87; Blatchford grievance*, June 20, 1984. Wilson — 15 pages. (87)†

Qualifications — both grievors deemed to be qualified; grievance allowed. *Re St. Peter's Centre & O.N.A.; Mallio and Carr grievances*, May 15, 1984. Majority: Teplitsky, McIntyre; dissent: Hopkinson — 18 pages. (88)

Qualifications — employer's procedure fair and unbiased; grievance denied. *Re Windsor, Corporation of City of & C.U.P.E., Loc. 543; Weston grievance*, June 25, 1984. Davis — 15 pages. (89)†

Qualifications — grievor's absentee and disciplinary record relevant; grievance dismissed. *Re Labatt's Ontario Breweries & Brewery Workers, Loc. 304; Cole grievance*, June 13, 1984. H. Brown — 18 pages. (90)



Qualifications — grievor as qualified as incumbent; grievance allowed. *Re Salvation Army Grace Hospital & S.E.U., Loc. 210; Pouti grievance*, June 25, 1984. Hinnegan — 13 pages. (91)†

Qualifications — grievor's qualifications inferior to those of successful applicant; grievance dismissed. *Re Great Atlantic and Pacific Company of Canada & U.F.C.W., Locs. 175 and 633; Martin grievance*, June 20, 1984. McKechnie — 19 pages. (92)†

Qualifications — insufficient evidence to prove grievor is as qualified as incumbent; grievance dismissed. *Re C.I.L. Inc. (Cornwall Works) Industrial Chemicals Division & U.S.W.A., Loc. 13142; Hebert grievance*, June 14, 1984. Emrich — 17 pages. (93)†

Qualifications — parties agreeing to test qualifications of both grievor and incumbent; arbitrator retaining jurisdiction. *Re Nipigon — Red Rock Board of Education & S.E.I.U., Loc. 268; Robinson grievance*, June 4, 1984. Aggarwal — 7 pages. (94)†

#### Recall

Extent of recall rights — recall rights reciprocal to those on lay-off; grievance allowed. *Re Timberjack (Division of Eaton Yale Ltd.) & Int'l. Molders and Allied Workers, Loc. 246; Brooks grievance*, June 22, 1984. McLaren — 14 pages. (95)

Physical ability to perform work — onus of establishing that modification of job practical rests upon trade union; grievance dismissed. *Re Franklin Manufacturing Ltd. & I.A.M., Loc. 1246; Saturno grievance*, May 17, 1984. Adams, Perron, Lewis — 7 pages. (96)

Qualifications — grievor not qualified to perform work in question; grievance dismissed. *Re Brown Bogs Foundry and Machine Company Limited & U.E., Loc. 520; Choban grievance*, June 13, 1984. Devlin — 20 pages. (97)†

#### Scheduling of Work

Implementation of new shift-schedule system — no entitlement to premium pay during implementation; grievance dismissed. *Re Dow Chemical Canada Inc. & E.C.W.U., Loc. 672; H.D.P.E. Process Operator grievance*, May 30, 1984. Barton — 6 pages. (98)†

Cancellation of scheduled work because actor ill — circumstances beyond employer's control; grievance dismissed. *Re National Arts Centre Corporation & Public Service Alliance of Canada; union grievance*, June 4, 1984. Kates — 11 pages. (99)

#### Seniority

Previous service preceding break in employment — not to be credited; grievance dismissed. *Re Ontario Hydro & Society of Ontario Hydro Management and Professional Staff; Goodings grievance*, May 24, 1984. Adams — 12 pages. (100)

Transfer outside bargaining unit — seniority continues so long as position as employee is maintained; employee outside bargaining unit entitled to apply for bargaining-unit position; grievance dismissed. *Re Canadian Lukens Ltd. & U.S. W.A.; union grievance*, June 13, 1984. Brunner — 15 pages. (101)

#### Severance Pay

Eligibility — employment terminated for reasons of redundancy; subsequent resignation; not affecting eligibility; grievance allowed. *Re West Parry Sound Board of Education & O.S.S.T.F., West Parry Sound Division, District 40; Johnne grievance*, June 13, 1984. Majority: McLaren, MacNiell; dissent: Dinsdale — 21 pages. (102)

#### Transfers

Temporary transfer — seniority not applicable; grievance dismissed. *Re Timmins, Corporation of City of & C.U.P.E., Loc. 210; Melanson grievance*, June 27, 1984. Majority: Dunn, Rukavina; dissent: De Gurse — 13 pages. (103)

#### Vacations

Absence on long-term disability to be considered as paid absence — employer allowed to pro-rate vacation entitlement; grievance denied. *Re St. Joseph's Hospital & S.E.U., Loc. 204; Parvanyik grievance*, June 12, 1984. Majority: Burkett, Sargeant; dissent: Simon — 19 pages. (104)

Effect of maternity leave — vacation entitlement to be pro-rated; grievance dismissed. *Re St. Catharines General Hospital & S.E.U., Loc. 204; Van Dijk grievance*, June 6, 1984. Majority: Adams, Sargeant; dissent: Lewis — 23 pages. (105)

Vesting of entitlement — collective agreement altered between anniversary date and vacation entitlement date; entitlement to additional week not vested; grievance dismissed. *Re Sudbury General Hospital & O.N.A.; Stephens grievance*, June 19, 1984. Majority: Brent, Winkler; dissent: Paliare — 9 pages. (106)

Calculation of entitlement where part-time employees become full-time employees — entitlement depending upon date of full-time employee subject to bridging provision allowing for service as part-time employee; grievance dismissed. *Re Bonnechere Manor (Corporation of County of Renfrew) & C.U.P.E., Loc. 1508; union grievance*, May 15, 1984. Roach — 15 pages. (107)†

#### Wages

Bonus for skidway preparation — "bulldoze or pay" principle not applicable; grievance dismissed. *Re Pic River Forest Products Inc. & Lumber and Sawmill Workers', Loc. 2693; union grievance*, June 5, 1984. Devlin — 19 pages. (108)†

Inequity payments for skilled tradesmen — not applicable to yard gang; grievance dismissed. *Re Goodyear Ltd. & United Rubber Workers, Loc. 189; union grievance*, June 13, 1984. P. Picher — 12 pages. (109)

Sessional teaching masters teaching more than 13 hours per week request the same payment as regular full-time teaching masters — no provision for non-bargaining unit teachers in collective agreement; grievance dismissed. *Re Loyalist College & O.P.S.E.U.; union grievance*, June 7, 1984. Brent, Shields, O'Neil — 4 pages. (110)

Hours in addition to those prescribed in job description worked — no entitlement to payment; grievance dismissed. *Re University of Toronto & Canadian Union of Educational Workers, Loc. 2; Graduate Assistants' Association; Miller grievance*, June 7, 1984. Majority: Weatherill, Cook; dissent: del Junco — 13 pages. (111)\*

Calculation of base pay for driver-salesmen — not to be reduced in week where statutory holiday; grievance allowed. *Re Humpty Dumpty Foods Limited & Milk and Bread Drivers, Loc. 647; union grievance*, May 31, 1984. Barton — 5 pages. (112)†

Progression — experience in one classification cannot be regarded as experience in another classification; grievance denied. *Re North Bay Hydro Electric Commission & C.U.P.E., Loc. 72; Armstrong grievance*, May 14, 1984. Duchesneau-MacLachlan, Young, Gower — 8 pages. (113)

Relieving in higher classification — determination of appropriate rate. *Re Participating Hospitals & O.N.A.; union grievance*, April 25, 1984. Majority: Teplitsky, Winkler; partial dissent: Paliare — 8 pages. (114)

Retroactivity of salary schedule — stand-by not retroactive since not calculated in accordance with salary schedule; call-in pay retroactive. *Re Hawkesbury and District General Hospital & O.N.A.; group grievance*, June 20, 1984. Majority: Saltman, Winkler; dissent: Paliare — 16 pages. (115)

Salary standard for producers — to be based upon experience as producer and not experience elsewhere in the corporation; grievances dismissed. *Re Canadian Broadcasting Corporation & National Radio Producers' Association; Arsenault and Kohsed-Currie grievances*, May 31, 1984. P. Picher — 11 pages. (116)

#### Welfare Plans

Drug plan funded totally by the company — altered unilaterally to reduce costs at inconvenience to employees; grievance allowed. *Re Modular Windows of Canada Ltd. & U.S.W.A., Loc. 2729; union grievance*, June 5, 1984. Schiff — 4 pages. (117)

Existing drug plan altered unilaterally by company — new plan continued to provide negotiated coverage; grievance dismissed. *Re Crothers Limited & U.A.W., Loc. 124; policy grievance*, June 11, 1984. Majority: Hinnegan, Smeenk; dissent: Bruce — 8 pages. (118)

#### Work Assignment

Bargaining-unit employees deciding to do some work on their own — management not involved in decision; grievance dismissed. *Re Timmins, Corporation of City of & C.U.P.E., Loc. 210; Dubois grievance*, June 14, 1984. Wilson — 3 pages. (119)†

Bargaining-unit work performed by non-unit employees — done for reasons of efficiency and economy; employer acting in good faith; grievance dismissed. *Re Golden Manor Home for the Aged (Corporation of City of Timmins & C.U.P.E., Loc. 1140; Godin and Pichette grievances*, June 27, 1984. Dunn, Rukavina, De Gurse — 5 pages. (120)

Bargaining-unit work performed by non-unit employees during summer vacation — assignment improper; grievance allowed. *Re Spruce Falls Power and Paper Company Limited & O.P.E.I.U., Loc. 166; union grievance*, June 5, 1984. Majority: Kates, Brown; dissent: Riordon — 17 pages. (121)

Bargaining-unit work performed by superintendent — situation an emergency; grievance dismissed. *Re Timmins, Corporation of City of & C.U.P.E., Loc. 210; Saudino grievance*, June 14, 1984. Wilson — 4 pages. (122)†

Construction of prototype assigned to less senior employee — employer not obliged to assign work to bargaining unit but bound by seniority provisions where assigned to bargaining-unit employee; grievance allowed. *Re Selkirk Metalbestos, Division of Wallace-Murray Canada Inc. & Sheet Metal Workers'; Hamilton grievance*, June 4, 1984. Thorne — 11 pages. (123)†

Inter-union dispute over work jurisdiction — matter adjourned; referred to Canada Labour Relations Board. *Re Bell Canada & Communications Workers and Canadian Telephone Employees; Hofstede grievance*, June 8, 1984. M. Picher, Churchill-Smith, Robbins; addendum: Robbins — 23 pages. (124)

Part-time employee given work when full-time employee available — employer under obligation to explain the change; grievance allowed. *Re Timmins, Corporation of City of & C.U.P.E., Loc. 210; Dallaire grievance*, June 14, 1984. Wilson — 5 pages. (125)†

Reduction of delivery-room complement — *bona fide* business decision not subject to arbitral review; grievance dismissed. *Re St. Joseph's Hospital & London and District Service Workers', Loc. 220; union grievance*, May 29, 1984. M. Picher, Coups, K. McDonald — 17 pages. (126)

Re-organization of work — company having right to re-organize; new job created and company obligated to determine proper labour grade. *Re Viceroy Fluid Power, Division of Baxter Technologies Corporation & United Rubber Workers, Loc. 723; union grievance*, May 18, 1984. Adams — 14 pages. (127)

Salaried employee performing bargaining-unit work — grievor available for assignment; grievance allowed. *Re Crothers Limited & U.A.W., Loc. 124; Prodanos grievance*, June 5, 1984. Majority: Hinnegan, Bruce; dissent: Macleod — 7 pages. (128)

Supervisors performing escort duty — integrity of bargaining-unit work not impaired; grievance dismissed. *Re Brink's Canada Limited & Teamsters, Loc. 91; union grievance*, June 15, 1984. Carrothers — 10 pages. (129)†

Supervisor performing bargaining-unit work — work assignment not the cause of lay-off; grievance dismissed. *Re Star Transfer Ltd. & Teamsters, Loc. 938; Blier grievance*, June 7, 1984. Majority: Saltman, Cowan; dissent: McRae — 18 pages. (130)

Supervisor training other employees on a limited basis — not an improper assignment of bargaining-unit work; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Loc. 1005; Gunby grievance*, June 4, 1984. Majority: Burkett, Storie; dissent: Marshall — 12 pages. (131)

Use of temporary employees — prohibited only where regular employees deprived of normal hours of work or where sufficient work to justify hiring of regular employee. *Re Mississauga Transit Department & A.T.U., Loc. 1572; union grievance*, May 28, 1984. Majority: Teplitsky, MacDermid; dissent: Stewart — 13 pages. (132)

Weekend overtime given to outside contractors — personnel unable to complete project by deadline due to continuing maintenance work load; grievance dismissed. *Re Firestone Canada Inc. (Hamilton Plant) & United Rubber Workers, Loc. 113; Byrne, Doyd et al grievance*; June 1, 1984. R.J. Roberts — 10 pages. (133)†



## Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the months of May, June and August, 1984.

### Collection

Failure to pay benefit remittances — employer directed to pay. *Re 480806 Ontario Ltd. and U.B.C.J.A., Loc. 1190; union grievance*, May 4, 1984. Franks, Murray, Rutherford — 3 pages. (134)

Failure to pay wages and benefits — employer directed to pay. *Re Ray Lee, c.o.b. as L & L Associates & U.B.C.J.A., Loc. 18, union grievance*, May 8, 1984. Franks, Wilson, Kobryn — 2 pages. (135)

Travel allowance — employer not represented at hearing — waiting refused as no evidence of damages; grievance allowed in part. *Re A. Simoes Construction Co. Ltd. & U.B.C.J.A., Loc. 1669; Sutherland grievance*, April 9, 1984. Furness, Kobryn, Swemor — 5 pages. (136)

Various benefit trust fund payments — employer not represented at hearing; order to pay issued. *Re Crescent Handling Systems & Int'l. Assoc. of Bridge, Structural and Ornamental Iron Workers, Local 700; union grievance*, April 6, 1984. Franks, Murray, Rutherford — 2 pages. (137)

Minutes of settlement set out. *Re W.G. McDonald Construction Co. Ltd. & Labourers Int'l. Union of North America, Loc. 527; union grievance*, July 20, 1984. Satterfield, Wilson, Kobryn — 3 pages. (138)

Union dues and benefit contributions — order for payment made. *Re Monaco General Interior Cont. Inc. & U.B.C.J.A., Locs. 27 & 1304; union grievance*, July 4, 1984. Gray, Murray, Kobryn — 2 pages. (139)

Union dues & benefit contributions — order for payment made. *Re Serit Construction Ltd. & I.U.O.E., Loc. 793; union grievance*, July 31, 1984. Davis, Bell, Cooke — 2 pages. (140)

### Collective Agreement

Reliance on collective agreement between employer and another local — it provided that employer pay union wages in other areas of province — applicant local not a party to that agreement and has no standing to bring grievance; grievance dismissed. *Re Sandercock Construction (1976) Ltd. & L.I.U., Loc. 1059; union grievance*, April 17, 1984. Satterfield, Murray, Collins — 9 pages. (141)

### Lay-Off

Eligibility for return payment — eligible only where reduction of staff at project and not where reduction in employer's overall operation; grievance dismissed. *Re Electrical Power Systems Construction Association, Ontario Hydro & I.B.E.W., Loc. 1788; union grievance*, July 12, 1984. Furness, Eayrs, Kobryn — 5 pages. (142)

### Partnership

Work performed by alleged partners — terms of partnership agreement never actually followed — in any case, condition that alleged partners become union members not complied with — workers not partners; grievance allowed. *Re Roman Plastering and Acoustical Co. & U.B.C.J.A., Loc. 2486; union grievance*, April 10, 1984. Furness, Bell, Kobryn — 8 pages. (143)

### Subsistence Allowance

Regular residence defined — no evidence that regular residence outside defined radius; grievance dismissed. *Re Electrical Power Systems Construction Assoc., Ontario Hydro & United Assoc. of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry, Loc. 1463; union grievance*, July 12, 1984. Furness, Ballentine, Bell — 4 pages. (144)

### Work Assignment

Jurisdictional dispute between Carpenters and Ironworkers — clarification of IJDB decision sought — applicant has not exhausted IJDB appeal procedures; grievance not arbitrable. *Re Electrical Power Systems Construction Assoc. & Ontario Hydro & Ontario Allied Construction Trades Council; union grievance*, April 10, 1984. Furness, Rutherford, Wightman — 18 pages. (145)

### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the months of July and August, 1984.

*Lennox & Addington County General Hospital & O.N.A.*; Majority: V.E. Scott, Switzman, dissent: Redford — 13 pages.

*Oakridge Villa Nursing Home & O.N.A.*; Majority: Lerner, Mayne; addendum: Mayne; dissent: Budd — 52 pages.

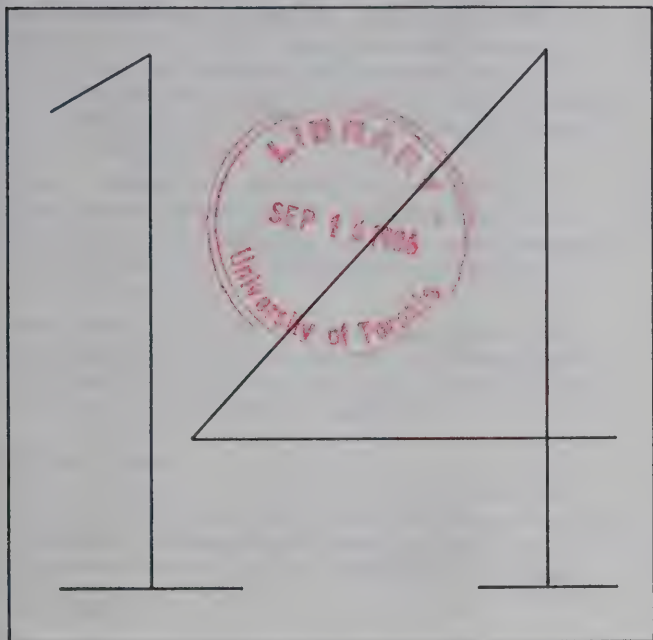
*Domus Building Cleaning Company Ltd. & C.U.P.E., Loc. 1657*; V.E. Scott; partial dissents: Beaulieu, Singer — 38 pages.

*Participating Hospitals (Victoria Hospital Corporation — London) & O.P.S.E.U., Loc. 106*; Interim Award. O'Shea, Winkler, Lewis — 2 pages.

### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1979, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

*Professor Ian Hunter* will be on sabbatical leave from the University of Western Ontario from July 1985 until the Spring of 1986. He will be unavailable for arbitration during that time.

*Professor Noel Lyon* will be on sabbatical leave from

Queen's University from September 1985 until August 1986. During that time, he will not be available for arbitration hearings.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of July, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

No collective agreement in force when grievance filed — grievance arbitrable under s. 45. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; Pogue grievance*, July 2, 1984. Baum — 21 pages. (1)†

Referred to arbitration outside time provided in settlement — no jurisdiction to extend time limits in settlement; grievance not arbitrable. *Re Golden Manor, (City of Timmins Home for the Aged) & C.U.P.E., Loc. 1140; Lightbody grievance*, July 26, 1984. Dunn — 4 pages. (2)





Settlement alleged — memorandum not executed; settlement not complete. *Re VS Services Ltd. & Milk and Bread Drivers, Loc. 647; Bator grievance*, June 21, 1984. Lerner — 9 pages. (3)†

Settlement of grievance alleged — matter settled; policy grievance inappropriate when specific relief for individual claimed; grievance dismissed. *Re Crothers Ltd. & U.A.W., Loc. 124; policy grievance*, July 19, 1984. Hinnegan, Bruce, Sargeant — 7 pages. (4)

#### Bargaining Unit

Managerial duties removed from position — creating job vacancy within bargaining unit; grievance allowed. *Re Carleton University & C.U.P.E., Loc. 2424; union grievance*, July 9, 1984. Majority: Kates, Head; dissent: Langley — 13 pages. (5)

Sessional teacher — union seeking to include employee within bargaining unit — arbitrable as union grievance; assignment of extra works not making person full-time employee; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; union grievance*, July 12, 1984. Majority: H. Brown, K. Hallsworth; dissent: Beaulieu — 19 pages. (6)

Supervisor — Sales Administration — only a lead hand position; position included within bargaining unit. *Re Brinks Canada Ltd. & Teamsters, Loc. 419; union grievance*, June 27, 1984. Majority: H. Brown, O'Discoll; dissent: Brisbin — 36 pages. (7)

Temporary appointment outside unit — collective agreement not applicable; grievance dismissed. *Re Ottawa Board of Education & C.U.P.E., Loc. 1400; policy grievance*, July 9, 1984. Kates, Chados, Head — 7 pages. (8)

#### Bereavement Leave

Extent of entitlement — provision for leave for death of "grandparent" not "grandparent-in-law"; grievance dismissed. *Re Beer Precast Concrete Ltd. & Labourers' Int'l., Loc. 506; Stephens grievance*, July 10, 1984. Swan — 11 pages. (9)†\*

#### Classification

Group leader rate claimed — not established on evidence; grievance dismissed. *Re Stelco Inc. (Lake Erie Works) & U.S.W.A., Loc. 8782; Cormier grievance*, July 9, 1984. Welling — 12 pages. (10)†

Higher classification claimed — essentially some duties as higher classification; grievance allowed. *Re Bell Canada & Communications Workers; Hill grievance*, June 28, 1984. Majority: Burkett, Beaulieu; dissent: Churchill-Smith — 14 pages. (11)

Support Services Officer claiming higher classification — duties coming within central care of higher classification; grievance allowed. *Re Fanshawe College & O.P.S.E.U.; Haazen grievance*, June 28, 1984. Majority: Brent, Switzman; dissent: Hallsworth — 19 pages. (12)

Higher classification claimed — not established; grievance dismissed. *Re Foster Wheeler Ltd. & U.S.W.A., Loc. 6519; Narkentin grievance*, June 7, 1984. Weatherill — 7 pages. (13)

Higher rate claimed for work not peculiar to higher classification — jobs overlapping; grievance allowed. *Re Windsor Corporation of City of, & Windsor Municipal Employees, Loc. 82; union grievance*, July 20, 1984. Majority: Samuels, Jones; dissent: Chapman — 22 pages. (14)

Higher rated job claimed — duties consistent with higher classification; grievance allowed. *Re Lambton College & O.P.S.E.U.; Arnold grievance*, June 28, 1984. Majority: Brent, Marszewski; dissent: Gray — 27 pages. (15)

Improper reclassification alleged — estoppel not established; grievance dismissed. *Re Sass Manufacturing Ltd. & Christian Labour Association, Loc. 53; group grievance*, July 23, 1984. Hinnegan — 21 pages. (16)†

#### Collection

Failure to remit union dues — payment with interest ordered. *Re Marshall Industries Ltd. & U.S.W.A.; union grievance*, July 20, 1984. Davis — 4 pages. (17)†

Holiday pay & overtime — grievances allowed. *Re Cumberland Clothing Ltd. & United Garment Workers; individual grievances*, July 11, 1984. Hearn — 5 pages. (18)†

Time sheets and testimony consistent — grievances allowed in amounts requested. *Re Cumberland Clothing Ltd. & United Garment Workers, Loc. 253; Lohoni and Lam grievances*, July 6, 1984. Wilson — 4 pages. (19)†

#### Collective Agreement

Existence of collective agreement — agreement existing even though no formal execution; conduct of parties indicating that agreement to retroactively apply to discharges; grievance arbitrable. *Re Canteen of Canada Ltd. & R.W.D.S.U., Loc. 414; Henderson grievance*, June 27, 1984. Mitchnick — 18 pages. (20)\*

Prepaid leave plan introduced unilaterally — union grievance appropriate; plan inconsistent with collective agreement; grievance allowed. *Re Seneca College of Applied Arts and Technology & O.P.S.E.U.; union grievance*, July 18, 1984. Majority: Brunner, Walsh; dissent: Ronson — 19 pages. (21)\*

#### Demotion

Inaccurate inventory — work performance record poor; 2-day suspension justified, permanent demotion too harsh; grievance allowed in part. *Re Collegiate/Arlington Sports, A Division of Imasco Retail Inc. & Retail, Commercial and Industrial Union, Loc. 206; McDonald grievance*, July 3, 1984. Beck — 13 pages. (22)\*

#### Discharge

Absence without notice — employer actions reasonable; grievance dismissed. *Re Canteen of Canada Ltd. & R.W.D.S.U., Loc. 414; Henderson grievance*, May 11, 1984. Mitchnick — 23 pages. (23)

Absence without notification — culminating incident; grievance dismissed. *Re National Auto Radiator Manufacturing Co. Ltd. & U.A.W., Loc. 195; Driscoll grievance*, July 10, 1984. Brandt — 10 pages. (24)

Absenteeism — culminating incident — grievor's work performance and intentions good; suspension substituted for discharge. *Re Domglas Inc. & Aluminum, Brick and Glass Workers, Loc. 203G; Geoghegan grievance*, July 10, 1984. Solomatenko — 12 pages. (25)†

Absenteeism due to a variety of medical problems — no evidence absenteeism likely to improve; grievance denied. *Re Bell Canada & Communications Workers; Michelin grievance*, July 11, 1984. Majority: Springate, Churchill-Smith; dissent: Switzman — 22 pages. (26)

Absenteeism — grievor's attendance record improving; conditional reinstatement. *Re Northern Telecom Canada Ltd. & U.A.W., Loc. 27; Episu grievance*, July 5, 1984. McLaren — 20 pages. (27)





Absenteeism — grievor's attitude good — further testing period in recognition of changed circumstances; grievance allowed with conditions. *Re CIP Inc., Container Division (Burlington) & Canadian Paperworkers, Loc. 949 — Burlington; Mitchell grievance*, June 29, 1984. H.D. Brown — 19 pages. (28)

Alcoholism — culminating incident — progressive discipline applied — employer acting justly; grievance dismissed. *Re Lennox Industries (Canada) Ltd. & U.S.W.A., Loc. 7235; Pugliese grievance*, July 24, 1984. Dempster — 10 pages. (29)

Attendance and punctuality poor during probationary period — employer's standards reasonable; grievance dismissed. *Re Ontario Hydro & Ontario Hydro Employees', Loc. 1000, C.U.P.E.; Faeth grievance*, July 20, 1984. Kennedy, Noonan, Charney — 14 pages. (30)

Dangerous conduct while on the job — employer entitled to expect safe and adequate performance of the job; grievance dismissed. *Re McCormick Home & London and District Service Workers, Loc. 220; Ferencowich grievance*, July 16, 1984. Samuels — 3 pages. (31)†

Dishonesty — motive relevant; mutual confidence capable of being restored; six-month suspension substituted for discharge. *Re Ontario Hydro & Ontario Hydro Employees, Loc. 1000, C.U.P.E.; Bennett grievance*, July 23, 1984. Majority: Knopf, Switzman; addendum: Switzman; dissent: Abbott — 24 pages. (32)

Dishonesty — participating in fraud albeit under coercion — grievance dismissed. *Re Canada Post Corporation & Letter Carriers; Reidy grievance*, June 28, 1984. Jolliffe — 29 pages. (33)

Fighting between employees — grievors' disciplinary records clean; suspension substituted for discharge. *Re Kennedy Lodge Nursing Home & S.E.U., Loc. 204; Dennis and Quimado grievance*, June 13, 1984. Majority: Brandt, Solberg; dissent: Graham — 17 pages. (34)

Fitness for work — grievor having a serious vision defect but performing job well and safely — fitness for work proven; grievance allowed. *Re Barton Tubes Ltd. & U.S.W.A., Loc. 14162; Demask grievance*, July 3, 1984. Gorsky — 20 pages. (35)†

Fitness to perform work — medical reports inconclusive; onus on employer to establish grievor's inability to work; grievance allowed, compensation not appropriate. *Re Echlin Canada Inc. & U.S.W.A., Loc. 8257; Mastroianni grievance*, July 25, 1984. Weatherill — 9 pages. (36)

Illegal strike — first offence — no notice of change in attitude by employer; suspension without compensation substituted. *Re Brewers Warehousing Co. Ltd. & United Brewers' Warehousing Workers'; July 9, 1984. Little — 41 pages. (37)*

Insubordination — culminating incident — insubordination proven; employer to adduce further evidence as to appropriate penalty. *Re Zymaize Company & U.F.C.W.U.; Lucio grievance*, June 24, 1984. Majority: Jolliffe, Dale; partial dissent: Beaulieu — 20 pages. (38)

Insubordination — refusal to carry out work order — poor record; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Ltd. & Canadian Union of United Brewery Workers, Loc. 325; Papak grievance*, July 9, 1984. Brandt — 16 pages. (39)

Misconduct alleged — employer not discharging onus; grievance allowed. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Risdon grievance*, March 23, 1984. Majority: Christie, Tate; dissent: Paulin — 67 pages. (40)

Insubordination: refusal to work and absenteeism — progressive discipline not applied; suspension substituted. *Re Linwo Industries Ltd. & Union of Linwo Employees; Sims grievance*, July 9, 1984. Hearn — 10 pages. (41)

Lateness and absenteeism — employee's record improved in past six months; suspension substituted for discharge. *Re Black Diamond Cheese & U.F.C.W.U., Loc. 688; Martin grievance*, July 6, 1984. Lyon — 14 pages. (42)†

Procedure — union representatives present at all meetings pertaining to grievor's discharge; discharge not void *ab initio*. *Re W.J. Mowat Limited and Specialized Parcel Delivery and Handlers' Union, Loc. 1681; Dale grievance*, July 4, 1984. M. Picher — 12 pages. (43)†

Theft alleged — consumption of partially opened beer — defiance of rules, not theft; reinstatement without compensation. *Re Delta Chelsea Inn & Hotel Employees Restaurant Employees, Loc. 75; Amoros grievance*, July 26, 1984. Wilson — 9 pages. (44)

Work performance poor as the result of alcohol — culminating incident; grievance dismissed. *Re Peel, Regional Municipality of, & I.B.E.W., Loc. 636; Wilson grievance*, June 27, 1984. Davis — 13 pages. (45)†

Work performance unsatisfactory — communication with grievor weak — no progressive discipline applied; reinstatement without compensation. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Jones grievance*, June 29, 1984. Adams — 20 pages. (46)

## Discipline

Absentee control programme — grievor put on probation; not disciplinary; grievance dismissed. *Re Moloney Electric Corporation & U.E., Loc. 536; Lethbridge grievance*, July 3, 1984. Majority: Verity, Healy; dissent: Knipfel — 7 pages. (47)

Absenteeism — grievor refusing to give explanation — two-day suspension substituted for five-day suspension. *Re Ottawa General Hospital & C.U.P.E., Loc. 1657; Laframboise grievance*, July 11, 1984. Thorne — 11 pages. (48)

Carelessness while voluntarily performing a job outside his classification — grievor to be disciplined for carelessness but not demoted; grievance allowed in part. *Re Fort Francis, Town of, & C.U.P.E., Loc. 65; Salchert grievance*, July 5, 1984. Davis — 16 pages. (49)†

Damage to company property — grievor not careless or unsafe; grievance allowed. *Re Peel, Regional Municipality of & I.B.E.W., Loc. 636; Revie grievance*, July 5, 1984. Kirkwood — 9 pages. (50)†

Driver's licence suspended as a result of grievor's misconduct — grievor not being able to perform duties of his classification; grievance dismissed. *Re Neapean, Corporation of City of, & Neapean Professional Fire Fighters Association, Loc. 1487; Workman grievance*, June 28, 1984. Brunner — 8 pages. (51)

Fighting with fellow employee — fight precipitated by the other employee; four-week suspension reduced to two days. *Re Toronto Western Hospital & C.U.P.E., Loc. 1744; Seegobin grievance*, June 28, 1984. Solomatenko — 21 pages. (52)†





**Insubordination** — shop steward present in time; penalty excessive; 5-day suspension reduced to 3-day suspension. *Re General Coach, A Division of Citair Inc. & U.B.C.J.A., Loc. 3054; Snell grievance*, June 28, 1984. Samuels — 10 pages. (53)†

**Insubordination** — leaving work early without permission — grievance dismissed. *Re Bristol-Myers Pharmaceutical Group & U.A.W., Loc. 1538; Degenova grievance*, July 5, 1984. Kennedy — 12 pages. (54)

**Insubordination** — refusal to work — management acting reasonably; grievance denied. *Re Colonial Cookies, A division of Beatrice International (Canada) Ltd. & U.F.C.W.U., Loc. 617P; Stevens grievance*, April 18, 1984. Majority: Lunney, Smith; dissent: Beaulieu — 7 pages. (55)

**Insubordination** to a supervisor in the presence of others — supervisor acting reasonably; grievance dismissed. *Re O and K Orenstein and Koppel Canada Ltd. & I.A.M., Local Lodge 1740; Stewart grievance*, July 12, 1984. Majority: Weatherill, Thornback; dissent: Carter — 9 pages. (56)

**Insubordinate language** — written warning not inappropriate; grievance dismissed. *Re Marianhill (Grey Sisters of the Immaculate Conception at Pembroke) & C.U.P.E., Loc. 2764; Marquardt grievance*, June 12, 1984. Abbott, McDougall, Jenkins — 18 pages. (57)

**Intoxication on the job** — intoxication not established; grievance allowed. *Re Royal Ontario Museum & O.P.S.E.U.; Campbell grievance*, July 4, 1984. Majority: Baum, Beaulieu; dissent: Davies — 10 pages. (58)

**Theft alleged** — theft established; grievance dismissed. *Re Denison Mines Ltd. & U.S.W.A.; Cyr grievance*, May 25, 1984. O'Shea — 17 pages. (59)

**Unreasonable and undisciplined conduct while performing duties in a position of authority** — just cause; grievance dismissed. *Re University of Toronto & United Plant Guard Workers, Loc. 1962; Ward grievance*, June 8, 1984. O'Shea — 18 pages. (60)

**Work performance** — failure to follow schedule — no cost to employer; written warning substituted for suspension. *Re Burlington, Corporation of City of, & C.U.P.E., Loc. 2723; Lovatt grievance*, July 9, 1984. Samuels — 7 pages. (61)†

## Evidence

**Interest arbitration award** — no need to prove award as extrinsic evidence; *Re Toronto East General and Orthopaedic Hospital Inc. & O.N.A.; association grievance*, July 17, 1984. Majority: Weatherill, Paliare; dissent: Hollister — 16 pages. (62)\*

## Grievance Procedure

**Attendance of grievor at Step 3 meeting** — no entitlement; grievance dismissed. *Re Quaker Oats Company of Canada Ltd. & U.F.C.W., Loc. 293-1; Hickey grievance*, July 16, 1984. Little — 15 pages. (63)†

**Timeliness** — grievance relating to contracting-out not continuing; no grounds for extension of time limit; grievance dismissed. *Re Cambridge, Corporation of City of, & A.T.U., Loc. 107; policy grievance*, June 29, 1984. McLaren — 15 pages. (64)

**Timeliness** — time running from when circumstances giving rise to grievance ought to have been known by grievor; grievance timely to limited extent. *Re Algonquin College & O.P.S.E.U.; Montone & union grievances*, June 29, 1984. Majority: Brent, Robbins; dissent: Gray — 14 pages. (65)

## Holidays

**Floating holiday** — employer unilaterally scheduling holiday while employees on legal strike — constituting failure to provide holiday; grievance allowed. *Re Ethyl Canada Inc. & E.C.W.U., Loc. 300; union grievance*, July 17, 1984. Hunter — 10 pages. (66)

**Qualifying days** — not applying to lieu day; grievance allowed in part. *Re Marianhill (Grey Sisters of the Immaculate Conception at Pembroke) & C.U.P.E., Loc. 2764; Marquardt grievance*. — see (57), supra. (67)

**Regular part-time employees claiming eleventh paid holiday** — grievance allowed. *Re Queensway-Carlton Hospital & Association of Allied Health Professionals, Ontario; union grievance*, July 23, 1984. Betcherman, McKellar, Stansel — 4 pages. (68)

## Holiday Pay

**Qualifying days** — absence because of illness — absences excused; grievances allowed. *Re St. Raphael's Nursing Home Ltd. & London and District Service Workers, Loc. 220; six individual grievances*, June 22, 1984. M. Picher — 14 pages. (69)†

**Qualifying days** — late cancellation of shift not disqualifying grievor; grievance allowed. *Re Trenton Memorial Hospital & O.N.A.; Astles grievance*, May 29, 1984. Majority: Ord, Robbins; dissent: Bowlby — 20 pages. (70)

## Illness

**Fitness to return to work** — medical evidence shows grievor able to perform work; grievance allowed. *Re Weston Bakeries Ltd., Dupont Street, Toronto & Teamsters, Loc. 647; Pavlovic grievance*, July 26, 1984. Brown — 12 pages. (71)

**Fitness to return to work** — physical ability to return to work established; grievance allowed. *Re Weston Bakeries Ltd., Dupont Street, Toronto & Teamsters, Loc. 647; Buonastella grievance*, July 17, 1984. H. Brown — 17 pages. (72)

**Indemnification of legal costs incurred by grievor: criminal charges resulting from accident during course of employment** — misrepresentation as to eyesight not disentitling grievor; grievance allowed. *Re Ottawa, Corporation of City of, & Ottawa Professional Firefighters Association; Craig grievance*, May 17, 1984. Kates — 34 pages. (73)\*

## Interest Arbitration

**Wages** — nine percent increase appropriate. *Re Royal Canadian Legion, Branch 9, & Hotel, Restaurant and Cafeteria Employees Loc. 75; June 15, 1984. Majority: McCulloch, Tate; dissent: Tepper* — 6 pages. (74)

## Job Posting

**"Acting" appointment** — appointment a permanent vacancy and to be posted as permanent vacancy; grievance allowed. *Re North York Board of Education for City of, & C.U.P.E., Loc. 1353; Canning grievance*, July 10, 1984. Egan — 9 pages. (75)†

**New jobs** — employer entitled to offer positions to maintained rate operators without posting; grievance dismissed. *Re Dow Chemical Canada Ltd. & E.C.W.U., Loc. 672; policy grievance*, July 3, 1984. Hunter — 13 pages. (76)†

**Temporary positions** — employer directed to post temporary positions in future; grievance allowed. *Re Porcupine and District Children's Aid Society & C.U.P.E., Loc. 2196; union grievance*, May 18, 1984. Betcherman — 6 pages. (77)†





**Job Vacancy**

Existence of vacancy — extensive use of part-time employees — not creating full-time vacancy; grievance dismissed. *Re County of Victoria (Victoria Manor) & C.U.P.E., Loc. 1167; union grievance*, July 4, 1984. Black — 6 pages. (78)†

**Jury & Witness Duty**

Witness duty occurring on paid lieu day — no entitlement to witness pay in addition; grievance dismissed. *Re Hawkesbury and District General Hospital & O.N.A.; Charbonneau grievance*, July 10, 1984. Majority: Burkett, Winkler; dissent: Swenarchuk — 14 pages. (79)\*

**Lay-Off**

Assignment of work to a supervisor resulting in grievor's layoff — no one else able to perform work which supervisor performed, grievance denied. *Re Midnorthern Appliances Industries Corp. & U.S.W.A.; Khan grievance*, July 24, 1984. Kruger — 5 pages. (80)†

Notice given while grievor on Weekly Indemnity — grievor entitled to be retained in employment for five working days upon return to employment; grievance allowed. *Re Port Weller Dry Docks, Division of Upper Lakes Shipping Ltd. & Int'l. Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Loc. 680; Johnston grievance*, May 24, 1984. Knopf — 11 pages. (81)†

Qualifications — grievors not capable of performing "work available" — company not required to provide training period; grievances dismissed. *Re Controlled Systems (Windsor) Ltd. & U.A.W., Loc. 195; Donahue and Popiel grievances*, June 25, 1984. Lerner — 12 pages. (82)

Qualifications — grievor not qualified physically for the job; grievance dismissed. *Re Midnorthern Appliances Industries Corp. & U.S.W.A.; Khan grievance*, July 24, 1984. Kruger — 6 pages. (83)†

Qualifications — grievor possessing qualifications and seniority; comparative evaluation improper; grievance allowed. *Re Acco Canadian Material Handling & U.A.W., Loc. 525; Shura grievance*, July 16, 1984. Majority: Hunter, Taylor; dissent: Glass — 16 pages. (84)

Notification — likelihood work would be available — no obligation to give notice until the need was clear; grievance dismissed. *Re Ceilcote Canada, Division of General Signal Ltd. & Sheet Metal Workers, Loc. 540; group grievance*, July 26, 1984. Weatherill — 7 pages. (85)

Qualifications — grievor qualified to perform all work available but not work of "hoped for" order — grievance allowed. *Re Ceilcote Canada, Division of General Signal Ltd. & Sheet Metal Workers, Loc. 540; Morgan grievance*, July 26, 1984. Weatherill — 7 pages. (86)

Qualifications — grievor unable to perform duties of higher classification without training; grievance dismissed. *Re S.A. Armstrong Ltd. and U.S.W.A.; Voyer grievance*, June 27, 1984. McKechnie — 12 pages. (87)†

**Leave of Absence**

Leave for personal reasons — employer not estopped from examining sufficiency of reasons as representation during bargaining not established; grievance dismissed. *Re Sudbury District Roman Catholic Separate School Board & O.E.C.T.A.; policy grievance*, July 6, 1984. Adams — 16 pages. (88)\*

Paid leave — payment for overtime not one of the terms of leave; grievance dismissed. *Re Superior Ambulance Ltd. & O.P.S.E.U., Loc. 207; Posteraro grievance*, July 7, 1984. Barton — 9 pages. (89)†

**Management Rights**

Smoking prohibition policy implemented — policy not unreasonable; grievance dismissed. *Re Thameswood Lodge & London and District Service Workers, Loc. 220; policy grievance*, July 3, 1984. Majority: Verity, Beaulieu; partial dissent: McNair — 9 pages. (90)\*

**Meal Allowance**

Entitlement — twenty-four hours advance notice relieving employer of requirement to pay; grievance dismissed. *Re Atomic Energy of Canada Ltd. and P.S.A.C., Loc. 70367; union grievance*, July 16, 1984. Kates, Healy, MacLean — 7 pages. (91)

**Overtime**

Distribution — employee not entitled to claim a preference for type or time of overtime assignment because of seniority; grievance dismissed. *Re Labatt's Ontario Breweries, Division of Labatt's Brewing Co. Ltd. — London Plant & National Brewery Workers, Loc. 1; Foglton grievance*, July 17, 1984. H.D. Brown — 13 pages. (92)

Distribution — equalization "insofar as possible" followed by employer; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Loc. 1915; Lynch grievance*, July 9, 1984. Weatherill — 9 pages. (93)

Remedy for improper distribution — in kind relief not possible — monetary relief necessary; grievance allowed. *Re 3M Canada Inc. & E.C.W.U., Loc. 294; Fluke grievance*, June 28, 1984. M. Picher — 13 pages. (94)\*

**Overtime Pay**

Recalled for duty from statutory holidays — employer authorized to change vacations but not scheduled statutory holidays; grievance allowed. *Re Prescott, Board of Commissioners of Police for Town of, & Prescott Police Association; Perrin grievance*, July 23, 1984. Aggarwal — 23 pages. (95)

**Part-Time Employees**

Unilateral alteration of commitment — requirement to negotiate; grievance allowed. *Re Toronto East General and Orthopaedic Hospital Inc. & O.N.A.; association grievance*. See (62), *supra*. (96)\*

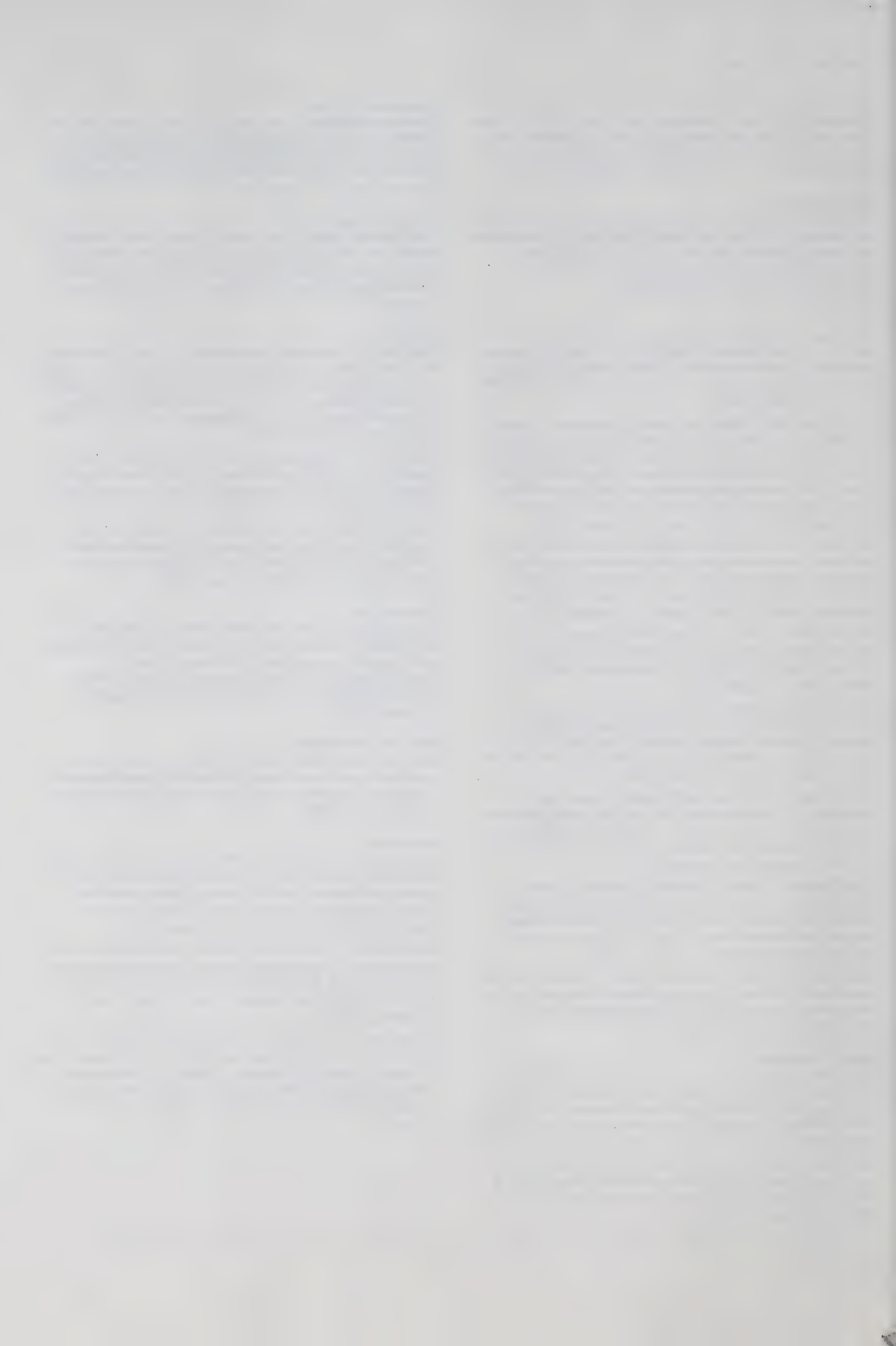
**Promotion**

Qualifications — expectation that employer would accept unqualified applications — employer not bound to do so; grievance dismissed. *Re Port Arthur General Hospital & O.N.A.; Benincasa grievance*, June 26, 1984. Teplitsky, Tocheri; addendum: McIntyre — 5 pages. (97)

Qualifications — experience regarded as being of greatest significance — management's decision reasonable; grievance dismissed. *Re St. Lawrence Power Company & I.B.E.W., loc. 2133; McAllister grievance*, June 26, 1984. Thorne — 16 pages. (98)†

Qualifications — grievor qualified but having record of absenteeism — employer not examining cause of absenteeism; grievance allowed. *Re University Hospital & London and District Service Workers, Loc. 220; Demelo grievance*, July 3, 1984. Majority: Hunter, Solberg; dissent: Perks — 14 pages. (99)





Qualifications — grievor qualified; grievance allowed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; Pogue grievance. See (1), supra. (100)†*

Qualifications — grievor's training, skill and ability less than incumbent's; grievance dismissed. *Re Rubbermaid Canada Inc. & U.A.W., Loc. 252; Sirio grievance, July 9, 1984. Weatherill — 6 pages. (101)*

Qualifications for temporary appointment — matter remitted to employer to determine if grievor having educational equivalent of grade 10. *Re Renfrew County Board of Education & C.U.P.E., Loc. 1247; Lavallee grievance, June 28, 1984. Pyle — 15 pages. (102)†*

Temporary promotion — seniority relevant; grievance allowed. *Re Inco Ltd. & U.S.W.A.; Foucault grievance, July 12, 1984. Majority: H.D. Brown, Carrier; did not concur: Walker — 11 pages. (103)*

#### Recall

Estoppel not applicable — grievor entitled to recall; grievance allowed. *Re Trenton, Public Utilities Commission of City of & I.B.E.W., Loc. 636; Kell grievance, July 10, 1984. Emrich — 20 pages. (104)†*

Failure to elect particular recall list — grievors remaining on list of factory from which they are laid-off; grievances dismissed. *Re Massey-Ferguson Industries Ltd. & U.A.W., Loc. 458; Romana and Patel grievances, July 17, 1984. Gorsky — 10 pages. (105)†*

New employee hired while grievor on lay-off — duty of fairness not applicable; no violation of collective agreement; grievance dismissed. *Re General Abrasive Operations, Dresser Canada Inc. & Teamsters, Loc. 1420; Cardinale grievance, June 29, 1984. Majority: H.D. Brown, McLaughlin; dissent: Mutimer — 19 pages. (106)*

Qualifications — employer not thoroughly assessing grievor's ability; grievance allowed. *Re Phillips Cables Ltd. & U.E.; Bissonnette grievance, June 29, 1984. Majority: P. Picher, Nabi; dissent: Stefanik — 23 pages. (107)*

Qualifications — no obligation to provide training period; grievance dismissed. *Re Procor Ltd. & Int'l. Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Loc. 75; McGee grievance, May 29, 1984. O'Shea — 17 pages. (108)†*

#### Reporting Pay

Entitlement — grievor not being required to attend for extra work; grievance dismissed. *Re Carling O'Keefe Transport Ltd. & Canadian Union of United Brewery Workers, Loc. 304; Hickey grievance, July 27, 1984. MacDowell — 6 pages. (109)*

#### Scheduling of Work

Alteration of schedule of seven employees in accounting department — employer actions reasonable if motivated by business efficiency; grievance dismissed. *Re Camco Inc. & U.E., Loc. 555; policy grievance, July 19, 1984. Devlin — 18 pages. (110)†*

Alteration of summer vacation schedules to eliminate all overtime — bad faith not established; grievance dismissed. *Re Ottawa General Hospital & C.U.O.E., Loc. 111; policy grievance, July 12, 1984. Fraser — 14 pages. (111)†*

Notice of schedule change — grievor not working within notice period; grievance dismissed. *Re Canadian National Exhibition Association & United Association of Journey-men and Apprentices of the Plumbing and Pipe Fitting Industry, Loc. 46; Coghlan grievance, July 11, 1984. Majority: Weatherill, Storie; dissent: Wilson — 11 pages. (112)*

Notice of change of shift schedule — notice applicable to entire shift schedule and not just particular shift; grievance allowed. *Re Royal Canadian Mint & P.S.A.C.; group grievance, June 30, 1984. Majority: Kates, Cochrane; dissent: Kelly — 10 pages. (113)*

#### Seniority

Calculation of "continuous employment" — based on employment relationship continuing and active employment; grievance allowed. *Re Fanshawe College of Applied Arts and Technology & O.P.S.E.U.; Hague grievance, July 23, 1984. Majority: Brunner, Cochrane; dissent: Shields — 11 pages. (114)*

Seniority to be applied on "local basis" — "local" meaning local work area and not local union. *Re Union Gas Ltd. & E.C.W.U.; Long grievance, June 25, 1984. Teplitsky, Morley, Nelson — 7 pages. (115)*

#### Sick Pay

Accumulation of sick leave credits — no reduction for absences not interrupting period of employment; grievance allowed. *Re St. Raphael's Nursing Home & London and District Service Workers, Loc. 220; six individual grievances. See (69), supra. (116)†*

#### Transfer

Bad faith alleged because of grievor's relationship with employer — not established; grievance dismissed. *Re St. Catherine's Association for the Mentally Retarded and C.U.P.E., Loc. 2276; Vance grievance, June 26, 1984. Barton — 9 pages. (117)†*

#### Union Rights

Discrimination alleged — failure to pay bilingual bonus to members of bargaining unit — union failing to obtain bonus in bargaining; grievance dismissed. *Re Children's Aid Society of Ottawa-Carleton & O.P.S.E.U.; Tremblay grievance, May 23, 1984. Majority: Scott, Binder; dissent: Ziemba — 17 pages. (118)*

Discrimination because of union activities alleged — union not meeting onus; grievance dismissed. *Re George Brown College of Applied Arts and Technology & O.P.S.E.U.; Hinchliffe grievance, July 3, 1984. Majority: Brunner, Gray; dissent: Kaufman — 16 pages. (119)*

Time off for union meeting — employer acting improperly in refusing leave — no compensation because employees acting improperly in leaving without permission. *Re Timmins Corporation of City of, & C.U.P.E., Loc. 210; group grievance, July 27, 1984. Dunn — 6 pages. (120)*

#### Vacations

Absence from work without pay because of illness — vacation entitlement not to be pro-rated; grievance allowed. *Re Marshall Gowland Manor (Corporation of City of Sarnia) & London and District Service Workers, Loc. 220; Lapier grievance, July 20, 1984. Majority: Devlin, Beaulieu; dissent: Furlong — 14 pages. (121)*





Absence on long term disability — vacation not to be pro-rated but no entitlement to accumulation of general holiday entitlement; grievance allowed in part. *Re Wardair Canada (1975) Ltd. & C.A.L.F.A.A.; Ginter grievance*, July 20, 1984. Majority: Knopf, Mayne; dissent: Wade — 13 pages. (122)

Entitlement where lay-off resulting from work injury — grievor not to be penalized for days lost as result of work injury; grievance allowed. *Re International Harvester Co. of Canada Ltd. & U.A.W., Loc. 127; Regnier grievance*, July 3, 1984. Hinnegan — 6 pages. (123)†

Scheduling — employer exercising discretion in fair and reasonable manner; grievance dismissed. *Re La Verendrye General Hospital & O.N.A.; Cupp and Foxtey grievances*, July 12, 1984. Phillips — 8 pages. (124)†

Scheduling — scheduled vacation changed because of strike — some vacation pay owing; grievance allowed in part. *Re Quaker Oats Co. of Canada Ltd. & U.F.C.W., Loc. 293-1; Brewster grievance*, July 3, 1984. Draper — 7 pages. (125)†

Scheduling — vacation scheduled during fall shut down — employer entitled to schedule at convenient time; grievance dismissed. *Re Galco Food Products Ltd. & U.F.C.W.; policy grievance*, July 10, 1984. Kruger — 11 pages. (126)†

#### Vacation Pay

Entitlement upon recall from lay-off — no pro-rated reduction for recalled employees; grievance allowed. *Re Gray Forging & Stampings Ltd. & U.E.; vacation pay and entitlements grievance*; July 19, 1984. Majority: McLaren, Hutchens; dissent: Glass — 17 pages. (127)

Calculation where lay-off — employees on lay-off entitled to vacation indemnity pay and not vacation pay; grievance dismissed. *Re Benson & Hedges (Canada) Inc. and Bakery, Confectionery and Tobacco Workers, Loc. 325-T; group grievance*, July 16, 1984. Weatherill — 9 pages. (128)

#### Wages

Educational increment — grievor not directly using education; grievance dismissed. *Re Metropolitan General Hospital, Windsor & O.N.A.; Favot-Gaudreault grievance*, July 27, 1984. Majority: Samuels, Burnell; dissent: Anand — 11 pages. (129)

Insurance premium increase collected from grievor — increase resulting from grievor's impaired driving conviction; no violation of wage provisions; grievance dismissed. *Re H. Fine & Sons Ltd. & Teamsters, Loc. 91; Gleason grievance*, June 28, 1984. Roach — 18 pages. (130)\*†

Merit pay distribution affected by Public Sector Compensation Restraint Act — legislation to be applied to cause least possible interference with collective agreement; grievance allowed. *Re Atomic Energy of Canada Ltd. & Society of Professional Engineers and Associates; 1983 merit allocation grievance*, June 14, 1984. Majority: Beck, Posen; did not concur: Sanderson — 7 pages. (131)\*

Placement on grid — estoppel not applicable; grievor to be credited for teaching experience as supply teacher; grievance allowed in part. *Re Haldimand Board of Education & O.S.S.T.F.; District 53; Pickering grievance*, July 20, 1984. Samuels, Brown, McNeil — 6 pages. (132)

Responsibility allowance — "full time table" referring to total number of periods within cycle; grievance dismissed. *Re Oxford County Board of Education & O.S.S.T.F.; policy grievance*, July 3, 1984. Burkett, Mustard, Bruce — 14 pages. (133)

#### Work Assignment

Foremen performing bargaining unit work — cease and desist order appropriate remedy. *Re International Harvester Co. of Canada Ltd. & U.A.W., Loc. 127; policy grievance*, July 3, 1984. Hinnegan — 5 pages. (134)†

Inequitable instructional assignments alleged — grievor not establishing either absolute or relative inequity; grievance dismissed. *Re Fanshawe College & O.P.S.E.U.; Ward grievance*, July 3, 1984. Majority: O'Shea, Hallsworth; dissent: McManus — 14 pages. (135)

New assignments resulting from contracting out — some assignments proper while others improper; grievances allowed in part. *Re Country Place Nursing Homes Ltd. & C.U.P.E., Loc. 1854; Cloutier et al grievances*, July 23, 1984. Weatherill — 20 pages. (136)†

Pick up and delivery work — most of work bargaining unit work; grievance allowed in part. *Re Midnorthern Appliances Industries Corp. & U.S.W.A.; union grievances*, July 20, 1984. Kruger — 9 pages. (137)†

Promotion of employee to foreman — still performing substantial amount of bargaining unit work; employer to cease assigning bargaining unit work; grievance allowed. *Re Picton, Public Utilities Commission of Town of & C.U.P.E., Loc. 1255; policy grievance*, July 17, 1984. Emrich — 23 pages. (138)†

Re-assignment to different machine — no right to perform specific operation within classification; grievance dismissed. *Re Fortune Footwear Division of Susan Shoe Industries Ltd. & United Textile Workers, Loc. 396; Boye grievance*, July 18, 1984. Majority: O'Shea, Sergeant; dissent: Bosnich — 13 pages. (139)

Temporary work assignment falling within classification — move characterized as a temporary transfer rather than a demotion; grievance dismissed. *Re Brantford, Board of Park Management and Recreation Commission of City of, & Brantford Civic Employees, Loc. 181; Chadwick grievance*, July 17, 1984. Betcherman — 8 pages. (140)†

#### Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the months of September and October, 1984.

#### Call-In-Pay

Call-in period contiguous to normal shift — entitlement to call-in premium rather than overtime premium; grievance allowed. *Re Ontario Hydro and Ontario Allied Construction Trades Council & I.U.O.E., Loc. 793; August 28, 1984. Tacom, Stamp, Kobryn — 11 pages. (141)\**

#### Collection

Failure to remit — payment ordered. *Re O.S.C. Partitions Ltd. & Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27 and 1304, U.B.C.J.A.; union grievance*, September 26, 1984. Satterfield, Murray, O'Keefe — 3 pages. (142)

#### Damages

Penalty provisions — enforceable as genuine pre-estimate of losses; payment ordered. *Re Masonry Contractors Association of Toronto Inc. and Parlay Construction Ltd. & Bricklayers, Masons Independent Union, Loc. 1; August 13, 1984. Springate, Murray, Ballantine — 6 pages. (143)*





Waiting time claimed — no evidence of loss; claim denied. *Re A. Simoes Construction Co. Ltd. & U.B.C.J.A., Loc. 1669*; August 14, 1984. Furness, Kobryn, Swenor — 2 pages. (144)

#### Discharge

Work performance unsatisfactory — grievors never told of employer's dissatisfaction; grievance allowed. *Re Le Brun Constructors Ltd. & I.U.O.E., Loc. 793*; August 24, 1984. Knopf, Stamp, Ross — 10 pages. (145)

#### Lay-Off

Assignment to work of another classification — not a lay-off; grievance dismissed. *Re National Elevator and Escalator Association, and Montgomery Elevator Ltd., & International Union of Elevator Constructors*, August 29, 1984. Majority: Furness, Murray; dissent: Ballentine — 10 pages. (146)

Bumping rights — bumping provision cannot be implied; grievance dismissed. *Re Ontario Hydro and I.B.E.W., Loc. 1788*; union grievance, September 20, 1984. Franks, Stamp, Rutherford — 2 pages. (147)

#### Related Employers

Non-union company established before union acquiring bargaining rights for employees of related company — board refusing to issue declaration. *Re Vallance & Levy Eng. Contractors Ltd. & I.U.O.E., Loc. 793*; August 16, 1984. Majority: Springate, Murray; did not concur: Kobryn — 3 pages. (148)

#### Travel Expenses

Employer requiring employees to return travel expense payment — grievance allowed; penalty provision a genuine pre-estimate of losses. *Re Masonry Contractors Association of Toronto Inc. and Skyline Construction Masonry Ltd. & Bricklayers, Masons Independent Union, Loc. 1*; August 13, 1984. Majority: Springate, Ballentine; did not concur: Murray — 18 pages. (149)

#### Union Rights

Protection of union stewards from lay-off — only one steward protected; no discrimination on part of employer. *Re Structform Group Inc. & Labourers' International Union, Loc. 506*; August 30, 1984. Franks, Stamp, Ballentine — 5 pages. (150)

#### Wages

Applicable wage schedule — Schedule "D" applicable; grievance dismissed. *Re Rumble Contracting Ltd. & I.U.O.E., Loc. 793*; August 31, 1984. Franks, Stamp, Rutherford — 10 pages. (151)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of October, 1984.

*Country Place Nursing Home & C.U.P.E., Loc. 1854*;

Majority: Waisglass, Robbins; addendum: Robbins; partial dissent: Macleod — 14 pages.

*H.J. McFarland Memorial Home & O.N.A. (full-time and part-time)*; Majority: Waisglass, Bateman; dissent: Symes — 7 pages.

*Seniorcare Retirement Residence & C.L.A.C.*; Saltman, Anthony, Adema — 11 pages.

*Participating Hospitals & O.P.S.E.U. and its Participating Locals*; (Local Issues) including:

*Humber Memorial Hospital & O.P.S.E.U., Loc. 577*; O'Shea, Winkler, Lewis — 4 pages.

*St. Joseph's General Hospital, Peterborough & O.P.S.E.U., Loc. 343*; Majority: O'Shea, Winkler; partial dissent re vacations: Lewis — 5 pages.

*Stratford General Hospital & O.P.S.E.U., Loc. 141*; Majority: O'Shea, Lewis; dissent: Winkler — 4 pages.

*Victoria Hospital, London & O.P.S.E.U., Loc. 106*; (2nd Interim Award); O'Shea, for the Board — 5 pages.

*Wellesley Hospital & O.P.S.E.U., Loc. 573*; O'Shea, Winkler, Lewis — 6 pages.

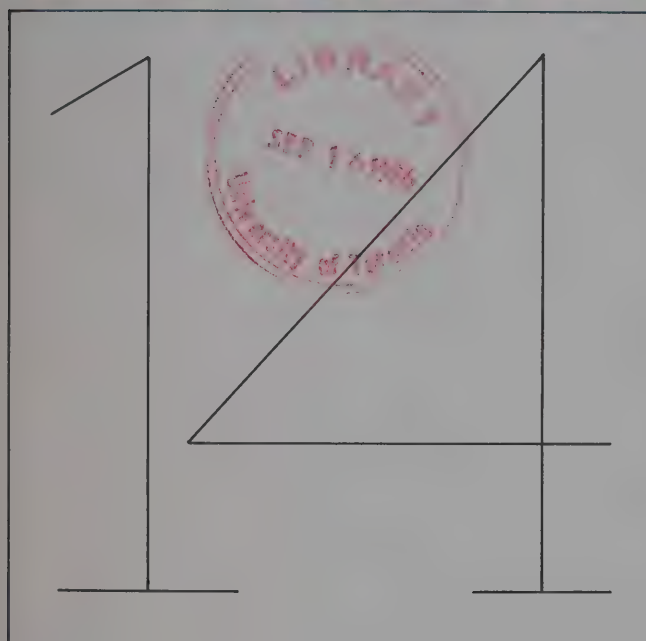
#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under the *Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.





# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

November, 1984  
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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

The following people have been approved for inclusion on the approved panel of arbitrators by the Minister of Labour:  
*Mr. Thomas A.B. Jolliffe*, Box 136, 410 Main Street South, Rockwood, Ontario, N0B 2K0; telephone: (519) 856-9116.  
*Mr. Douglas C. Stanley*, Arbitration Services, Suite 900, 2 Sheppard Avenue East, Willowdale, Ontario, M2N 5Y7; telephone: (416) 226-5150.

*Professor Donald D. Carter* has accepted a two year appointment as Director of the School of Industrial Relations and the Industrial Relations Centre at Queen's University. During this time, Professor Carter will be unavailable for arbitration.

*Professor Geoffrey England* will be leaving Queen's University to return to Alberta. In view of this, Professor England has advised that he will no longer be available for arbitration.



### Change of Address

The following changes should be noted effective immediately: Ms. Jane H. Devlin, 170 Frederick Street, Suite 301, Toronto, Ontario, M5A 4J1; telephone: (416) 366-3091. Mr. Ross L. Kennedy, Box 270, Toronto-Dominion Centre, IBM Tower, Suite 3300, Toronto, Ontario, M5K 1N2; telephone: (416) 865-7373. Ms. Paula S. Knopf, 29 Goodwood Avenue, Toronto, Ontario, M6E 1J1; telephone: (416) 652-1516. Mr. Michel G. Picher, Mrs. Pamela C. Picher, 2281 Yonge Street, Suite 202, Toronto, Ontario, M4P 2C6; telephone: (416) 483-6442.

### Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of November, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

### Board of Arbitration

Retention of jurisdiction for purposes of implementation of award — no jurisdiction to amend award; award standing as issued. *Re Maple Lodge Farms Ltd. & U.F.C.W., Loc. 1105P; Rafael grievance*, August 21, 1984. Majority: Devlin, Robbins; dissent: MacDermid — 3 pages. (1)

### Classification

Application of C.W.S. — manual skill and safety considered. *Re Slacan, Division of Slacan Steel Industries Ltd. & U.S.W.A., Loc. 3505; classification grievance*, July 31, 1984. Wilson — 14 pages. (2)†

Change of duties — no change in classification; grievance dismissed. *Re Vitafoam Products Canada Ltd. & United Electrical, Radio and Machine Workers of America, Loc. 518; Mero grievance*, July 31, 1984. McKechnie — 9 pages. (3)†

Downward restructuring by the company — company within its right to do so; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Loc. 1000; Barnstijn grievance*, August 8, 1984. Majority: Swan, McHenry; dissent: McCulloch — 24 pages. (4)

General labourer classification claimed — grievor performing function of classification; grievance allowed. *Re Winchester Cheese Inc. & R.W.D.S.U., Loc. 440; Sager grievance*, August 28, 1984. Kates — 8 pages. (5)†

Higher classification claimed — grievor deficient in major aspect of job; grievance dismissed. *Re Inco Ltd. & U.S.W.A., Loc. 6500; Brownlee grievance*, August 14, 1984. Majority: Gorsky, Simpson; dissent: Carriere — 13 pages. (6)

Higher classifications claimed — qualifications of grievors not relevant; grievances dismissed. *Re Ottawa Civic Hospital & I.U.O.E., Loc. 796; Rodwanski and Straud grievances*, June 20, 1984. Bernstein — 6 pages. (7)†

Work added to job classification — no "qualitative" change in the work; grievance denied. *Re Webster Mfg. (London) Limited & International Molders Union, Loc. 49 (London); Pike, et al grievance*, July 30, 1984. Weatherill — 7 pages. (8)

### Collective Agreement

Expiry of agreement — no further obligation to pay salary increments; grievance dismissed. *Re Youth Services Bureau of Ottawa-Carleton & C.U.P.E., Loc. 2195; union grievance*, August 3, 1984. Emrich — 22 pages. (9)†

### Contracting Out

Appropriate remedy — in kind remedy appropriate where breach innocent; compensation appropriate where breach deliberate. *Re Alcan Canada Products Ltd. & I.A.M., Loc. 54; contracting out grievances*, July 3, 1984. H. Brown, J. Sanderson; addendum: S. Lewis — 13 pages. (10)\*

No express prohibition in agreement — estoppel not applicable; grievance dismissed. *Re Alcan Canada Products Ltd. & U.S.W.A., Loc. 343; union grievance*, August 13, 1984. McCaughey — 6 pages. (11)†

Suppliers placing price tags on products sold by employer — not established that bargaining unit employees denied employment; grievance dismissed. *Re Drug City — Orangeville, Kent Drugs Ltd. & R.W.D.S.U.; union grievance*, August 7, 1984. Majority: Adams, Weir; dissent: Solberg — 13 pages. (12)\*

Use of outside police constables — not a contracting out since constables not engaged by employer; no express prohibition of contracting-out; grievance dismissed. *Re McMaster University & McMaster Security Guards Association; policing for special events grievance*, July 30, 1984. Majority: P. Picher, Darwen; dissent: Jessop — 20 pages. (13)

### Discharge

Absence and failure to produce medical certificate within 5 days — grievor having opportunity to save job but not doing so; grievance dismissed. *Re Oaklith Division of Susan Shoes Industries Ltd. & Amalgamated Clothing and Textile Workers, Loc. 314; Cabral grievance*, August 23, 1984. Majority: Kruger, Tarasuk; dissent: Clark — 9 pages. (14)

Absence without leave alleged — unreasonable refusal to extend leave; grievance allowed. *Re Cottage Hospital & O.P.S.E.U., Loc. 302; Markle grievance*, June 31, 1984. Majority: O'Shea, Marszewski; dissent: Ubels — 23 pages. (15)

Absence without leave; breach of reinstatement agreement — failure to disclose drug addiction not voiding agreement; grievance dismissed. *Re Toronto Transit Commission & Amalgamated Transit Union, Loc. 113; Mr. P. grievance*, July 31, 1984. Majority: P. Picher, Ronson; dissent: Beaulieu — 32 pages. (16)

Absent without notification — work record poor; grievance dismissed. *Re Canada Post Corporation & Canadian Union of Postal Workers; Sword grievance*, August 13, 1984. P. Picher — 13 pages. (17)

Absent without permission — grievor leaving job having assumed she would be granted permission to do so; assumption not reasonable; work record excellent; reinstatement without compensation. *Re Toronto Secondary School Board & Ontario Secondary School Teachers' Federation, District 15; Dallaire grievance*, July 31, 1984. P. Picher — 25 pages. (18)

Absenteeism — alleged non-compliance with the terms of settlement of grievor's original dispute — grievor complying with terms of settlement; grievance allowed. *Re Canada Post Corporation & Letter Carriers' Union of Canada; Nisbett grievance*, August 15, 1984. Kates — 12 pages. (19)

Absenteeism — discharge precipitous denying grievor access to disability benefits at exact point when he had completed the qualifying period; grievance allowed. *Re Mississauga, Corporation of the City of (Transit Department) & Amalgamated Transit Union, Loc. 1572; Smith grievance, August 27, 1984. Devlin — 26 pages. (20)†*

Absenteeism — no evidence that the situation would improve; grievance dismissed. *Re Worthington Canada Inc. & I.A.M.A.W., Loc. 1673; Garcia grievance, August 17, 1984. Barton — 10 pages. (21)†*

Assault upon fellow employee — grievor not contrite; grievance dismissed. *Re Walbar of Canada Inc. (Plant 2) & U.S.W.A.; Bertuola grievance, August 3, 1984. Black — 11 pages. (22)†*

Failure to adhere to employer's policy — previous record of insubordination; culminating incident; grievance dismissed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Metro Toronto Civic Employees, Loc. 43; Moule grievance, July, 1984. Majority: Andrews, Milks; dissent: Tate — 29 pages. (23)*

Dishonesty alleged — proven that grievor attempted to sell company goods privately; grievance dismissed. *Re Coca-Cola Limited & Soft Drink Workers' Joint Local Executive Board; Greco grievance, August 20, 1984. Burkett — 13 pages. (24)*

Fighting — grievor provoking attack by fellow employee; grievance dismissed. *Re Steinberg Inc. & U.F.C.W., Loc. 175; Martinovitch grievance, August 16, 1984. Kirkwood — 9 pages. (25)†*

Fraud alleged — intent to deliberately mislead employer not proven; reinstatement with partial compensation. *Re Quaker Oats Company of Canada Ltd. & U.F.C.W., Loc. 293-1; Asselin grievance, August 10, 1984. Emrich — 22 pages. (26)†*

Inability to get along with fellow workers — just cause established — progressive discipline administered; grievance dismissed. *Re Cadillac Fairview Corporation Limited & I.U.O.E., Loc. 796; Evans grievance, July 11, 1984. O'Shea — 23 pages. (27)†*

Insubordination: failure to follow instructions — grievor's record poor but not enough to warrant discharge; suspension without pay substituted for discharge. *Re Frederick Transport Limited & Canadian Union of United Brewery Workers; Johnston grievance, August 24, 1984. Saltman — 15 pages. (28)*

Intoxication while on job — lack of mitigating factors; grievance dismissed. *Re Brewers Warehousing Company Limited & United Brewers Warehousing Workers Provincial Board Canadian Brewery Workers; Taylor grievance, August 10, 1984 — MacDowell — 28 pages. (29)\**

Lateness — culminating incident — progressive discipline applied; grievance dismissed. *Re Algoma Steel Corporation & U.S.W.A., Loc. 2251; Piroballi grievance, August 22, 1984. Knopf — 18 pages. (30)†*

Personal appearance: long hair — company policy void for vagueness; grievor's use of drugs not relevant; reinstatement with compensation; costs of adjournment not awarded. *Re Holiday Tavern & Bartenders & Beverage Dispensers of H.E.R.E. International Union, Loc. 280; O'Leary grievance, August 29, 1984. Wilson — 14 pages. (31)†*

Probationary employee — grievance arbitrable; decision to terminate unreasonable; damages but no reinstatement. *Re Burns Meats Ltd. & U.F.C.W.; Searles grievance, August 20, 1984. Kruger — 13 pages. (32)†*

Settlement incorporated in award. *Re Toronto, Corporation of the City of & Metropolitan Toronto Civic Employees, Loc. 43; Jackson grievance, August 22, 1984. Devlin, Milks, Lewis — 3 pages. (33)*

Theft — deliberate theft of food from the company proven; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; Serafini grievance, August 4, 1984. Gandz — 17 pages. (34)†*

Theft: grievor converting to his own use monies properly belonging to his employer — just cause proven; grievance dismissed. *Re Leamington, Corporation of the Town of, & C.U.P.E., Loc. 528; Chase grievance, August 3, 1984. Hinnegan — 18 pages. (35)†*

Work performance; culminating incident — progressive discipline applied; grievance dismissed. *Re Eastern Steelcasting Division of Ivaco Co. & U.S.W.A., Loc. 8794; Seguin grievance, June 18, 1984. Bernstein — 8 pages. (36)†*

Work performance poor — culminating incident; grievance dismissed. *Re Canada Post Corporation & Canadian Union of Postal Workers; Dwyer grievance, August 15, 1984. Adams — 24 pages. (37)*

Work performance poor — progressive discipline not properly applied; suspension substituted for discharge. *Re Simcoe County Board of Education & C.U.P.E., Loc. 1310; Lajeunesse grievance, August 3, 1984. Solomatenko — 20 pages. (38)†*

#### Discipline

Absence without authorization to participate in political protest — reprimand not unreasonable; grievances dismissed. *Re Loyalist College of Applied Arts & Technology & O.P.S.E.U.; Plummer et al grievances, July 17, 1984. Majority: H. Brown, Shields; did not concur: Walsh — 19 pages. (39)*

Bad manners displayed while working in a public area — discipline consistent with requirements of progressive discipline; grievance dismissed. *Re Carleton University & C.U.P.E., Loc. 2424 (Carleton University Support Staff Association); Dagenais grievance, August 20, 1984. Thorne — 13 pages. (40)†*

Failure to follow safe driving practices resulting in a motor vehicle accident — clean record not enough to mitigate grievor's fault; grievance dismissed. *Re Bell Canada & Communications Workers of Canada (Croft and Services Employees); Rickards grievance, August 16, 1984. Majority: Burkett, Filion; dissent: Beaulieu — 13 pages. (41)*

Inferior work — not proven by employer; grievance allowed. *Re Simcoe, Corporation of Town of, & C.U.P.E., Loc. 2457; Reeves grievance, August 17, 1984. Barton — 8 pages. (42)†*

Insubordination — grievor telling stories to avoid work; grievance dismissed. *Re Simcoe, Corporation of Town of, & C.U.P.E., Loc. 2457; Reeves grievance, August 17, 1984. See (42) supra. (43)†*

Insubordination — threat against foreman — grievance dismissed. *Re Philips Cables Limited, Brockville Plant, & International Union of Electrical Workers, Loc. 510; Coon grievance, August 10, 1984. Emrich — 18 pages. (44)†*

Insubordination — uneven enforcement of policy by employer; 10-day suspension reduced to 5 days. *Re Canada Post Corporation & Canadian Union of Postal Workers; Levy grievance, August 9, 1984. Adams — 32 pages. (45)*



Intoxication while on duty — grievor unfit to work; grievance dismissed. *Re Toronto Western Hospital & C.U.P.E., Loc. 1744; Mulholland grievance*, August 13, 1984. Wilson — 8 pages. (46)†

Procedure — grievor denied right to steward representation during first meeting; grievance allowed. *Re Metro Toronto News Company & Teamsters, Loc. 419; Verpaelt grievance*, August 23, 1984. Barrett — 9 pages. (47)†

Use of city letterhead without authorization — deliberate attempt to mislead the police — disciplinary response reasonable; grievance dismissed. *Re Toronto, Corporation of the City of, & C.U.P.E., Loc. 79; Grant grievance*, August 9, 1984. Devlin — 12 pages. (48)

Use of excessive force in the classroom — employer not proving excessive force; grievance allowed. *Re Metropolitan Separate School Board & Branch Affiliates of the Metro Toronto Elementary and High Units of the O.E.C.T.A. and Teachers of A.E.F.O.; Kavanagh grievance*, August 20, 1984. Majority: Brandt, Nelson; dissent: Filion — 17 pages. (49)

Work performance careless — progressive discipline justified; grievance dismissed. *Re Guelph Elastic Hosiery Co. Ltd. & United Garment Workers, Loc. 508; Burgess grievance*, August 8, 1984. Rose — 9 pages. (50)

Work performance poor — employer using a distorted standard for monitoring productivity; grievance allowed. *Re Coca-Cola Ltd. & Canadian Union of United Brewery Workers; Dube et al grievances*, July 27, 1984. M. Picher — 21 pages. (51)

Work performance: poor workmanship and attitude alleged — grievor inadequately instructed or inspected on his new job; grievance allowed. *Re Pioneer Chain Saw Corporation Inc. & U.S.W.A.; McMinn grievance*, August 23, 1984. Betcherman — 10 pages. (52)†

### Employment Status

Indefinite lay-off as regular employees; utilized as casual or part-time help — grievors part-time employees; only entitled to fringe benefits for three months following formal re-classification. *Re Howell Transport Canada Inc. & Canadian Brotherhood of Railway, Transport & General Workers; Skinner et al grievances*, July 26, 1984. Adams — 25 pages. (53)

### Grievance Procedure

Timeliness — employer not prejudiced by an extension of time limits; case to be heard on its merits. *Re Circle R. Boys Ranch & O.P.S.E.U. Classen grievance*, August 10, 1984. Houston — 8 pages. (54)†

Timeliness — failure to comply with a mandatory time limit; union not proving legitimate reasons for delay in proceeding to arbitration; grievance not arbitrable. *Re Toronto Chromium Plating Limited & U.S.W.A., Loc. 7558; Willock grievance*, August 9, 1984. Draper — 8 pages. (55)

Timeliness — grievance against demotion not continuing; language of agreement preventing extension of time limits; grievance not arbitrable. *Re Swiss Chalet Employers' Association & Canadian Union of Restaurant and Related Employees; Vieno grievance*, August 23, 1984. M. Picher, Woodland, Pratt — 9 pages. (56)

Timeliness — significance of issue justifying extension of time limits. *Re St. Joseph's Hospital, Guelph & Ontario Nurses' Association; union grievance*, August 1, 1984. Majority: Brent, McIntyre; dissent: Filion — 16 pages. (57)\*

### Health & Safety

Reduction of number of local health & safety committees — matter for corporate health & safety committee; grievance allowed in part. *Re Bell Canada & Communications Workers of Canada; union grievance*, August 15, 1984. Adams; addenda: Filion, Beaulieu — 11 pages. (58)

### Holiday Pay

Entitlement of employees working on ten-month basis — no entitlement for holidays occurring during period when employees not scheduled for work; grievance dismissed. *Re Northumberland and Newcastle Board of Education & Health, Office & Professional Employees Division of Loc. 206, Retail, Commercial, & Industrial Union; policy grievance*, August 14, 1984. Emrich — 33 pages. (59)

Qualifying days — absence because of sickness disqualifying grievor; grievance dismissed. *Re Canada Wire & Cable Ltd. & U.S.W.A., Loc. 7608; Cove grievance*, July 26, 1984. H. Brown — 10 pages. (60)

Qualifying days — qualifying conditions not met; grievances dismissed. *Re FBM Distillery Co. Ltd. & Canadian Union of United Brewery Workers, Loc. 304; White et al grievances*, August 3, 1984. Weatherill — 11 pages. (61)

Qualifying days where shift exchange — exchange altering qualifying days; grievance allowed. *Re Vision Nursing Home & Christian Labour Association of Canada; union grievance*, August 7, 1984. Hinnegan — 7 pages. (62)†

### Indemnification

Theft resulting from grievor's negligence — employer's attempt to recover loss disciplinary; full indemnification unfair; grievance allowed in part. *Re Canada Post Corporation & Canadian Postmasters and Assistants Association; Johnston grievance*, July 27, 1984. Saltman — 29 pages. (63)\*

### Interest Arbitration

Scheduling of casual part-time nurses — scheduling regulations and scheduling commitment inappropriate; proposal denied. *Re Welland County General Hospital & O.N.A.; local issues*, July 25, 1984. Verity, Wilson; addendum: Ballantyne — 12 pages. (64)

### Job Posting

Hiring preference for employees previously hired — grievor failing to satisfactorily complete his previous term; grievance dismissed. *Re University of Toronto, Governing Council & C.U.P.E., Loc. 1230, Part-time Bargaining Unit; John grievance*, August 23, 1984. Dunn, Cook, Griffin — 7 pages. (65)

Lead hand position — not a separate classification; grievance dismissed. *Re CAE — Montupet Diecast Ltd. and I.A.M., Loc. 2719; policy grievance*, August 17, 1984. Barton — 7 pages. (66)†

Temporary transfer — job posting procedure applying only to permanent vacancies; grievance dismissed. *Re Domtar Inc., Domtar Packaging Containerboard Division — Trenton & Canadian Paperworkers, Loc. 1470; Saga grievance*, August 21, 1984. Majority: O'Shea, Brady; dissent: Paxton — 13 pages. (67)

### Lay-Off

Qualifications — company making selection on the basis of relative ability and not on basis of grievor's ability; grievance allowed. *Re Acco Canadian Material Handling & U.A.W., Loc. 525; Jack grievance*, August 2, 1984. Majority: Brandt, Taylor; dissent: Glass — 18 pages. (68)

Qualifications — grievor qualified and competent to be recalled; grievance allowed. *Re Savage Shoes Limited, Preston Plant, Cambridge, Ontario & Amalgamated Clothing & Textile Workers, Shoe Division, Loc. 307; Bartlett grievance*, August 7, 1984. Devlin — 26 pages. (69)

Reduction of bidruns — not a lay-off because work force not changed; grievances dismissed. *Re All Trans Express & Teamsters, Loc. 938; Philip et al grievances*, August 16, 1984. Majority: McLaren, Coltrinari; dissent: Petryshen — 18 pages. (70)

#### Leave of Absence

General leave requested to complete articling and bar admission course — employer's refusal reasonable and in good faith; grievance dismissed. *Re Ontario Public Service Employees Union & Ontario Public Service Staff Union; Nabi grievance*, August 3, 1984. Barrett — 17 pages. (71)†

Special leave — necessary for grievor to be with son during hospitalization; grievance allowed. *Re Public Service Alliance of Canada & Alliance Employees Union — Unit II; Radmore grievance*, July 25, 1984. Edwards — 22 pages. (72)

#### Management Rights

Determination of language proficiency — employer entitled to disregard grievor's failure of formal test; grievance dismissed in part. *Re Wardair Canada (1975) Ltd. & C.A.L.F.A.A.; Buckley grievance*, August 20, 1984. Kennedy — 15 pages. (73)

#### Overtime

Distribution — company not obliged to offer overtime to apprentices after it has been declined by tradesmen; grievance dismissed. *Re Firestone Canada Inc. & United Rubber Workers, Loc. 113; Norris et al grievances*, August 21, 1984. Gandz — 9 pages. (74)†

Distribution — overtime not restricted to a specific classification but allocated according to needs of the department; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & Metropolitan Toronto Civic Employees Union, Loc. 43; MacLellan grievance*, July 31, 1984. O'Shea — 22 pages. (75)†

Distribution: Equalization — absolute equality not necessary; grievance dismissed. *Re Northern Telecom Canada Limited & U.A.W., Locs. 27, 1837, 1839, 1905, & 1915; Harris et al grievance*, August 7, 1984. Brandt — 11 pages. (76)

Distribution — not a system of equalization but one of fair distribution; company required to give overtime to employee with fewest credited overtime hours; damages appropriate remedy. *Re Gulf Canada Products Company, Clarkson Refinery & Energy and Chemical Workers, Clarkson, Loc. 593; Hall grievance*, August 20, 1984. Kennedy — 19 pages. (77)

Distribution: trainee entitled as though working in former job classification — former classification meaning job worked prior to becoming trainee; grievance dismissed. *Re S.K.D. Manufacturing Co. Limited & U.A.W., Loc. 89; Parete grievance*, July 12, 1984. Brandt — 9 pages. (78)

Entitlement of laid-off employee — entitled to "sixth shift" overtime; grievance allowed in part. *Re Hocketts, Division of Harsco, & U.S.W.A., Loc. 7577; Hewitson grievance*, August 28, 1984. Baum — 13 pages. (79)†

#### Overtime Pay

Payable for work during "normal off-duty time" — normal tour of duty established by duty roster; grievance allowed. *Re Prescott Board of Commissioners of Police for the Town of & Prescott Police Association; Perrin grievance*, July 23, 1984. Aggarwal — 23 pages. (80)

#### Premium Pay

Shift premium — nurses on extended day tour entitled to shift premium; grievance allowed. *Re St. Joseph's Health Centre, Toronto, St. Joseph's General Hospital, Peterborough, Lady Minto Hospital, Cochrane & O.N.A.; four grievances concerning shift premium for extended tours*, August 24, 1984. Majority: Samuels, McIntyre; dissent: Winkler — 13 pages. (81)

#### Procedure

Adjournment requested — adjournment granted on employer's undertaking to pay costs of day, and understanding that matter to be continued within reasonably short time. *Re Taggart Services Ltd. & Progressive Motor Transport Employees' Association; Stratton grievance*, August 22, 1984. M. Picher — 6 pages. (82)

#### Promotion

Qualifications — grievor able to perform job; grievance allowed. *Re Inco Limited & U.S.W.A., Loc. 6500; Gunn grievance*, August 14, 1984. Majority: Gorsky, Seguin; dissent: Simpson — 17 pages. (83)

Qualifications — grievor's knowledge and experience less than successful applicant's; grievance dismissed. *Re Toronto Hydro-Electric System & C.U.P.E., Loc. 1; Chartrand grievance*, August 22, 1984. Kruger — 4 pages. (84)

Qualifications — grievor possessing greater seniority and required qualifications for the job; grievance allowed. *Re Kingston, Corporation of Township of, & C.U.P.E., Loc. 1850; Holmes grievance*, July 30, 1984. Thorne — 17 pages. (85)†

#### Recall

Qualifications — training period not required; qualifications not established; grievance dismissed. *Re Ontario Banknote Ltd. & Toronto Typographical Union, No. 91 (ITU); Worsley grievance*, August 10, 1984. Betcherman — 9 pages. (86)†

#### Rectification

Language creating anomalous result — rectification not appropriate; grievance dismissed. *Re Hayes-Dana Inc. & U.A.W., Loc. 676; company grievance*, July 30, 1984. Weatherill — 9 pages. (87)\*

#### Redundancy

Right of redundant probationary teacher to receive priority consideration for vacancy — priority only where teacher qualified; grievance dismissed. *Re Temiskaming Board of Education & A.E.F.O.; Leclerc grievance*, August 24, 1984. M. Picher — 22 pages. (88)

#### Seniority

Bumping rights in lay-off situation — grievor not having right to signify job preference; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Lea grievance*, August 22, 1984. Majority: Brent, Morley, dissent: Marshall — 13 pages. (89)



Seniority "within the group" — "group" having connotations less than the term "unit"; no intent that seniority be applied on a seniority unit basis; grievance dismissed. *Re Bell Canada & Communications Workers of Canada; Frederick and Roesel grievance*, August 30, 1984. Majority: Shime, Healy; dissent: Beaulieu — 9 pages. (90)

#### Sick Leave

Emergency illnesses of family members — payment not guaranteed unless situation an emergency; grievance allowed in part. *Re Brantford, Corporation of City of, & C.U.P.E., Loc. 181; Nagle grievance*, August 10, 1984. McKechnie — 8 pages. (91)†

Requirement of medical certificate — diagnosis not on medical certificate; grievance dismissed. *Re Ontario Hydro & Ontario Hydro Employees' Union, C.U.P.E., Loc. 1000; Sherwood grievance*, August 22, 1984. Swan, Abbott, McCulloch — 14 pages. (92)

#### Sick Pay

Entitlement — authorization of absence by company officials not established; grievance dismissed. *Re Brink's Canada Ltd. & Teamsters, Loc. 419; Arthur grievance*, August 20, 1984. Houston — 9 pages. (93)†

#### Union Rights

Salary information — not entitled to such information in absence of employee consent; grievance dismissed. *Re Carleton University & C.U.P.E., Loc. 2424; policy grievance*, August 16, 1984. Thorne — 13 pages. (94)†

Refusal of use of a teaching room for a general meeting — arbitrary application of policy; grievance allowed. *Re Trenton Memorial Hospital & O.N.A., Loc. 183; union grievance*, July 27, 1984. Emrich — 15 pages. (95)\*†

#### Vacations

Calculation of entitlement — no automatic entitlement on crossing second anniversary date; grievance dismissed. *Re Tillsonburg & District Association for the Mentally Retarded & O.P.S.E.U.; Meron grievance*, August 7, 1984. McLaren, Coups, McManus — 6 pages. (96)

Calculation of entitlement where absences because of illness; pro-rating on basis of vacation year appropriate; grievance dismissed. *Re Kingston, Corporation of City of, & C.U.P.E., Loc. 141; Storring grievance*, August 9, 1984. Thorne — 16 pages. (97)†

Calculation of entitlement where sale of business — service with predecessor employer to be counted; grievance allowed. *Re Middlesex-London District Health Unit & O.N.A.; Patterson grievance*, August 10, 1984. Majority: Saltman, McIntyre; dissent Brackstone — 19 pages. (98)\*

#### Wages

Allowance for masters degree — allowance not to be paid twice where two masters degrees; grievance dismissed. *Re Essex Board of Education & O.S.S.T.F., District 34 and A.E.F.O.; policy grievance*, August 20, 1984. Majority: Brandt, Bartlet; did not concur: Ross — 13 pages. (99)

Experience increment — method of accumulation and timing of payment applicable to both part-time and full-time employees; grievance allowed. *Re Leeds and Grenville County Board of Education & Branch Affiliates of the Ontario Public School Teachers' Federation and Federation of Women Teachers' Associations of Ontario; Werely grievance*, August 1, 1984. Adams — 8 pages. (100)

Merit pool — company need not allocate stipulated percentage if honest effort made; grievance dismissed. *Re Atomic Energy of Canada Ltd. Engineering Co. and P.S.A.C., Loc. 00358; policy grievance*, August 16, 1984. Saltman — 11 pages. (101)

"On call" rates — being on call a greater imposition during the weekend; employees to be compensated for the entire weekend, not merely the hours for which they were on call; grievance allowed. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees' Union, Loc. 1000; union grievance*, July 30, 1984. Dunn, McHenry, McCulloch — 5 pages. (102)

Placement upon salary grid — external service not to be credited; grievances dismissed. *Re Smiths Falls Community Hospital & O.N.A.; Turnbull et al grievances*, August 16, 1984. Majority: Shime, Winkler; dissent: Paliare — 10 pages. (103)

Placement upon salary grid — relevant and recent past experience not taken into account; grievance allowed. *Re Maitland Manor & O.N.A.; More grievance*, August 17, 1984. Barton — 9 pages. (104)†

#### Welfare Plans

Disability benefits — extent of entitlement determined correctly; grievance dismissed. *Re Hydro-Electric Commission of the City of York & C.U.P.E.; Smith grievance*, August 16, 1984. Kruger — 11 pages. (105)†

#### Work Assignment

Bargaining unit work performed by non-bargaining unit employee — union failing to discharge onus of proof by providing an analysis of duties involved; grievance dismissed. *Re Canadian National Institute for the Blind & Canadian Union of Blind and Sighted Merchants, Loc. 681; union grievance*, August 7, 1984. Solomatenko — 6 pages. (106)†

Elimination of classification — additional amount of work performed by supervisor not sufficient to trigger job claims by grievors; grievances dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Loc. 1005; group and policy grievances*, July 31, 1984. Burkett, Storie; dissent: Marshall — 15 pages. (107)

Holiday work — grievor qualified and having sufficient knowledge of the work site; grievance allowed. *Re Inco Limited & U.S.W.A., Guilbeau grievance*, July 18, 1984. Majority: Gorsky, Carriere; dissent: Keenan — 11 pages. (108)

Re-assignment of work to nursing staff outside bargaining unit — orderlies not having exclusive claim to such work; grievance dismissed. *Re Victoria Hospital Corporation & London & District Service Workers, Loc. 220; policy grievance*, August 24, 1984. Majority: Knopf, McDermott; dissent: Walsh — 21 pages. (109)

Staffing — average class size provision excluding special education classes; grievance allowed. *Re Wentworth County Board of Education & F.W.T.A.O.; class size grievance*, August 17, 1984. Burkett, Stewart, Lewis — 11 pages. (110)

Tool design work — employer having right to decide that tool design not required in manufacture of tools; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Loc. 673; grievance #W9-82*, August 28, 1984. H. Brown — 12 pages. (111)

Use of part-time employees — no violation of collective agreement; grievance dismissed. *Re Etobicoke, Corporation of City of, & C.U.P.E., Loc. 185; policy grievance*, August 27, 1984. H. Brown, Cowan, Broadbent — 16 pages. (112)

## Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the month of November, 1984.

### Collection

Pension and welfare assessments — payment ordered. *Re Hespeler Concrete Floors Ltd. & Labourers' International Union, Ontario Provincial District Council*, October 12, 1984. Franks, Eayrs, Kobryn — 2 pages. (113)

### Discrimination

Refusal to hire grievor — refusal motivated by grievor's colour; grievance allowed. *Re Ellis-Don and Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27 and 1304, United Brotherhood of Carpenters and Joiners*; October 15, 1984. Gray, Stamp, Collins — 13 pages. (114)

### Reporting Pay

Entitlement — grievor not reporting for work "on schedule"; grievance dismissed. *Re Barager Mechanical Installation & United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Loc. 46*; October 11, 1984. Majority: Satterfield, J. Wilson; did not concur; N. Wilson — 4 pages. (115)

### Subcontracting

Awarding of contract to perform work encompassed by collective agreement by anyone not covered by union security clause amounting to improper subcontracting — grievance allowed. *Re Brant County Board of Education & International Union of Bricklayers and Allied Craftsmen, Loc. 9*, October 24, 1984. Majority: Knopf, Kobryn; dissent: Ronson — 11 pages. (116)

### Union Security

Failure to employ union members — determination of amount owing. *Re Roman Plastering and Acoustical Co. & United Brotherhood of Carpenters and Joiners, Loc. 2486*, October 11, 1984. Furness, Ball, Kobryn — 3 pages. (117)

Failure to employ union members — order to pay trade union for loss of work to members. *Re Reimer Overhead Doors Ltd. & United Brotherhood of Carpenters and Joiners, Loc. 1669*, October 2, 1984. Furness, Kobryn, Stamp — 15 pages. (118)

Failure to employ union members or subcontract to company bound by Provincial Agreement — order to pay trade union for loss of work to members. *Re Coldmatic Refrigeration of Canada Ltd. & United Brotherhood of Carpenters and Joiners, Loc. 18*, October 5, 1984. Knopf, Kobryn, Donnelly — 7 pages. (119)

## The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of November, 1984.

*Oakridge Villa Nursing Home & O.N.A. (full-time and part-time)*; Supplementary award and collective agreement. Majority: Lerner, Mayne; did not concur: Budd — 4 pages.

*Glen-Stor-Dun Lodge (United Counties of Stormont, Dundas and Glengarry) & C.U.P.E., Loc. 1792*; H. Brown, Comrie, Robbins — 8 pages.

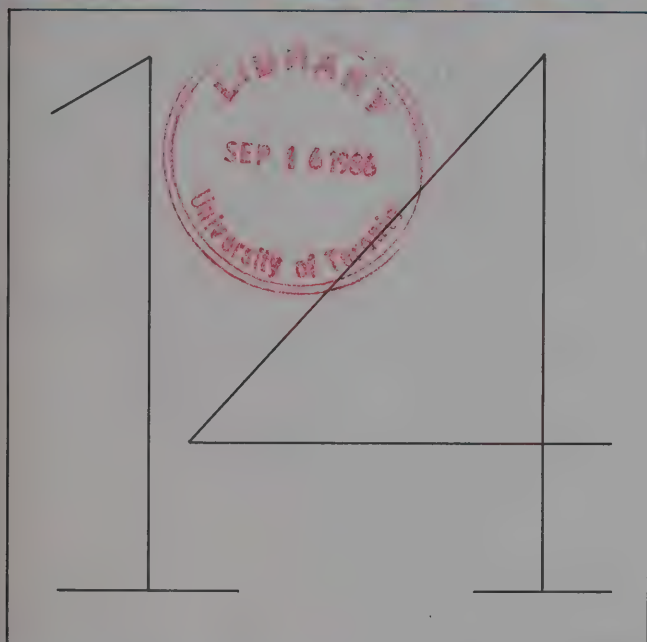
*Participating Hospitals & S.E.I.U., Locs. 183, 204, 268, 478, 532, and 777 (Central Issues)*; Kruger, dissent: Filion; dissent to follow: Lewis — 20 pages.

*Participating Hospitals & S.E.I.U., Locs. 183, 204, 268, 478, 532, and 777 (Local Issues)*; Majority: Kruger, Filion; dissent to follow: Lewis — 4 pages.





# Monthly Bulletin



Ontario Ministry of Labour



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T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

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Office of Arbitration as a service to  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of September, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Disciplinary warnings — no substantive right provided to grievor; grievance not arbitrable. *Re Steinberg Inc. (Miracle Food Mart Div.) & Teamsers, Local 419; policy grievance*, September 19, 1984. R.J. Roberts — 10 pages (1)†

Part-time employee grieving failure to award full-time position — grievor having right under part-time collective agreement; grievance allowed in part. *Re Ottawa General Hospital & O.N.A.; Leech grievance*, September 6, 1984. Fraser; dissent: Stansel; dissent: Gordon — 30 pages. (2)



Scope of grievance — union attempting to raise new issue; matter not arbitrable. *Re Electrohome Ltd. & I.B.E.W., Local 2345; group grievance*, September 4, 1984. Rayner, Moore, Boehmer — 12 pages. (3)\*

Specificity of grievance — grievance vague and not arbitrable. *Re Golden Manor Home for the Aged (City of Timmins) & C.U.P.E., Local 1140; group grievance*, September 12, 1984. Dunn — 2 pages. (4)

#### Bereavement Leave

Entitlement — employees entitled to three consecutive working days off regardless of whether one of the days off has already been scheduled; grievance allowed. *Re St. Joseph's Hospital (London) & O.N.A.; Macvoy grievance*, September 13, 1984. Brent, Winkler, Paliare — 4 pages. (5)

#### Board of Arbitration

Jurisdiction to award costs — awarding of costs not appropriate. *Re Ontario Public Service Employees Union & Ontario Public Service Staff Union; Patterson grievance*, September 10, 1984. Swan, Griffin, addendum: Nielson — 7 pages. (6)\*

#### Classification

Dispatchers — to be treated as probationary firefighters; grievance allowed. *Re Welland, Corp of the City of & Welland Professional Fire Fighters Association; union grievance*, September 27, 1984. Kennedy — 23 pages. (7)

Downgrading — grievor no longer performing duties of higher classification; grievance dismissed. *Re Carrier Canada & Sheet Metal Workers; Foulds & policy grievance*, September 28, 1984. Majority: P. Picher, Addario; dissent: Whittaker — 16 pages. (8)

Higher classification claimed — not performing duties of higher classification to a sufficient extent; grievance dismissed. *Re Camco Inc. & U.E. Local 550; Thachuk grievance*, August 23, 1984. McKechnie — 9 pages. (9)†

Higher classification including all functions of lower classification — higher classification reflecting greater knowledge and experience; grievance dismissed. *Re Ontario Jockey Club & Hotel Employees, Restaurant Employees, Local 75; Elia grievance*, August 31, 1984. Majority: Langille, Bertuzzi; dissent: Tate — 15 pages. (10)

#### Collective Agreement

Effect of renewal agreement — not overriding rights vested under previous agreement; grievance allowed. *Re Kitchener-Waterloo R.C. High School Board of Governors and London & District Service Workers, Local 220; Weare grievance*, September 19, 1984. Davis — 10 pages. (11)†

#### Contracting Out

Estoppel applicable — grievance dismissed. *Re Court Industries Co. Ltd. & I.A.M., Local 268; Lampman et al grievances*, August 29, 1984. McKechnie — 12 pages. (12)†

Sandblasting and painting subcontracted under the terms of the collective agreement — company having exclusive function to determine its methods of operation, grievance dismissed. *Re E.S. Fox Limited & U.S.W.A., Local 8979; Moody and Gingras grievance*, September 26, 1984. Majority: Brunner, Brady; dissent: Chamelot — 12 pages. (13)

Security guards — employer exercising sufficient control for guards to be employees; grievance allowed with a nominal sum to be paid by the employer in lieu of union dues. *Re The Royal Ontario Museum & S.E.U., Local 204; Union grievance*, September 13, 1984. Majority: Adams, Solberg; dissent: Earle — 64 pages. (14)\*

Work sharing agreement — not requiring employer to release contractors; estoppel not applicable; grievance dismissed. *Re Bell Canada and Communication Workers; Depew grievance*, September 6, 1984. Majority: P. Picher, Healy; dissent: Robbins — 45 pages. (15)

#### Demotion

Result of surplus condition — employer using an objective mechanism (clerical appointment date); grievance dismissed. *Re Bell Canada & Communications Workers; Lahaie grievance*, September 18, 1984. Burkett, Healy, Robbins — 23 pages. (16)

#### Discharge

Absence from work without reasonable excuse — culminating incident; grievance dismissed. *Re Lockwood Manufacturing Inc. & U.A.W., Local 397; St. Onge grievance*, September 5, 1984. Barton — 10 pages. (17)†

Absenteeism: employer not applying procedures for release for incapacity — release for incapacity including release for reasons of excessive innocent absenteeism; grievance allowed. *Re Canada Post & C.U.P.W.; policy grievance*, September 4, 1984. Burkett — 18 pages. (18)

Absenteeism — grievor failing to keep employer informed on reason for continuing absence by providing a timely doctor's certificate; grievance dismissed. *Re Fortune Footwear Division of Susan Shoe Industries & United Textile Workers of America; Serra grievance*, August 29, 1984. Rose — 9 pages. (19)†

Absenteeism — grievor not meeting conditions of earlier reinstatement; grievance dismissed. *Re Rim Trim Inc. & U.S.W.A.; Cormier grievance*, August 14, 1984. O'Shea — 13 pages. (20)

Absenteeism — improvement unlikely; grievance dismissed. *Re Webster Mfg. (London) Ltd. & Int'l Molders' and Allied Workers', Local 49; Lirette grievance*, September 6, 1984. Brent — 14 pages. (21)

Abuse of sick leave — grievor working for his own company while allegedly unable to work for his employer as a result of medical reasons; grievance dismissed. *Re White Farm Manufacturing Canada Limited & U.A.W., Local 458; Bruen grievance*, August 31, 1984. Black — 15 pages. (22)†

Abuse of sick leave — basis of trust essential to any employment relationship no longer existing; grievance dismissed. *Re Bilt-Rite Upholstering Company Limited & The Upholsterers' International Union Local 30; Passero grievance*, September 7, 1984. M. Picher — 25 pages. (23)†

Alcoholism — grievor prepared to undergo treatment; conditional reinstatement. *Re University Hospital & London and District Service Workers Local 220; Smollich grievance*, August 28, 1984. Burkett, Kort, Solberg — 4 pages. (24)

Culminating incident — grievor not accountable for error because of mental state; reinstatement with conditions. *Re Thibodeau-Finch Express Ltd. & Teamsters, Local 938; Fraser grievance*, June 8, 1984. Rayner, Tayles, Petryshen — 13 pages. (25)

Culminating incident — absenteeism and dishonesty — circumstances justifying conditional reinstatement. *Re Fleet Industries & I.A.M.*; *Hall grievance*, May 24, 1984. Rayner — 5 pages. (26)

Deliberate slowdown of work — poor work record; grievance dismissed. *Re Margaret's Fine Foods Limited & Teamsters Local Union No. 647*; *Ateshin grievance*, July 26, 1984. Rayner — 12 pages. (27)

Dishonesty — alteration of company records — discharge appropriate; grievance dismissed. *Re Spruce Falls Power and Paper Co. Ltd. & Canadian Paperworkers Local 89*; *Valliere grievance*, September 25, 1984. Majority: Kennedy. Ubels; dissent: Paxton — 32 pages. (28)

Dishonesty — fare irregularities depriving employer of proper fares while converting fares to own use; grievance dismissed. *Re Toronto Transit Commission & A.T.U. Local 113*; *Schweizer grievance*, September 25, 1984. Majority: Shime, Ronson; dissent: Beaulieu — 17 pages. (29)

Dishonesty alleged — purchase price of safety shoes for which grievor was to be reimbursed falsified — grievor's guilt not completely proven; conditional reinstatement. *Re Daymond Limited & U.A.W. Local 127*; *Bristol grievance*, June 7, 1984. Rayner — 8 pages. (30)

Dishonesty — grievor breaking company rules; dishonest with employer and with Board of Arbitration; employment relationship unable to be re-established; grievance dismissed. *Re Ambro Ready-Mix, A Division of Ambro Materials and Construction Ltd. & Teamsters Local 230*; *Mitchell grievance*, August 31, 1984. Majority: Knopf, Petta; dissent: Robbins — 18 pages. (31)

Employer not calling evidence — direction that grievor be reinstated with compensation. *Re Brink's Canada Ltd. & Teamsters, Local 149*; September 18, 1984. Houston — 3 pages. (32)†

Failure to appear for work the day after a suspension — failure of communication on the company's part and confusion on the grievor's part; two-day suspension substituted for discharge. *Re Venco Metals Ltd. & U.S.W.A.*; *McAuliffe grievance*, September 25, 1984. Weatherill — 11 pages. (33)

Falsification of company timesheets alleged — insufficient evidence; grievor arriving late for work frequently; warning for lateness to be substituted for discharge. *Re Loblaw's Limited & U.F.C.W., Local 1000A*; *Ricketts grievance*, September 20, 1984. Weatherill — 16 pages. (34)

Fraud alleged — not proven; onus on employer to justify discharge; grievance allowed. *Re Toronto, Corp. of the City of & C.U.P.E. Local 43*; *Bernstein grievance*, August 31, 1984. Majority: Knopf, Milks; partial dissent: Tate — 18 pages. (35)

Letter of resignation, signed at time of hiring — individual bargaining permitted; termination by mutual assent; grievance dismissed. *Re Haldimand Board of Education and O.S.S.T.F.*; *Pickering grievance*, September 4, 1984. Majority: Brandt, Riddell, dissent: McLean — 19 pages. (36)

Negligent driving habits — culminating incident — progressive discipline applied; grievance dismissed. *Re Bill Thompson Transport Limited & Canadian Transportation Workers Local 188*; *Grove grievance*, May 15, 1984. Majority: Rayner, Dale; dissent: Nelson — 9 pages. (37)

Procedure — employer not informing grievor of final decision in presence of union official — not a substantive right; union's objection dismissed. *Re Benson and Hedges (Canada) Ltd. & Bakery, Confectionery and Tobacco Workers Local 325-T*; *Levy grievance*, August 28, 1984. Foisy — 13 pages. (38)

Theft — not an isolated incident; grievance dismissed. *Re Stelco Inc. & U.S.W.A., Local 1005*; *Searles grievance*, June 8, 1984. Majority: Rayner, Storie; dissent: Marshall — 9 pages. (39)

Theft — unblemished work record; grievor not selling cigarettes she took from company; three month suspension substituted for discharge. *Re Benson and Hedges (Canada) Ltd. & Bakery, Confectionery and Tobacco Workers, Local 325-T*; *Levy grievance*. See (38) *supra*, (40)

Unavailable while on call — reasonable mitigating circumstances; three month suspension substituted for discharge. *Re Humber Memorial Hospital & O.N.A., Rodrigues grievance*, September 21, 1984. Davis — 10 pages. (41)†

Work performance — alcohol related problems — progressive discipline and help given by employer — grievor making some progress in dealing with his condition; 2 week suspension and conditional reinstatement to be substituted for discharge. *Re Franklin Manufacturing, a Division of W.C.I. Manufacturing Ltd. & I.A.M., Local Lodge 1246*; *Mokha grievance*, August 30, 1984. Brandt — 16 pages. (42)

Work performance — discharge excessive; reinstatement to a different bus route with no compensation. *Re Hammer Bus Lines Inc. & C.U.P.E., Local 895*; *Guenette grievance*, September 10, 1984. Brunner, Sheridan, McVey — 16 pages. (43)

Work performance — unsatisfactory driving habits — failure to sufficiently warn grievor; grievor reinstated without compensation. *Re Ottawa-Carleton Regional Transit Commission & A.T.U. Local 279*; *Fitzgerald grievance*, September 20, 1984. Brunner — 10 pages. (44)

#### Discipline

Absence without notice — progressive discipline applied but grievor not receiving first discipline before second offence; penalty modified. *Re Burlington Canada Inc. & Labourers' Local 183*; *Hopkins grievances*, September 12, 1984. Barton — 8 pages. (45)†

Absenteeism — employer having right to require medical prognosis and to refuse to permit grievor to return to work until condition met; grievance dismissed. *Re Dominion Metalwire Industries Ltd. & Sheet Metal Workers, Local 540*; *Rengifo grievance*, August 27, 1984. O'Shea — 14 pages. (46)†

Assault against fellow employee alleged — grievor exercising some supervisory authority — company's response reasonable; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Local 414*; *Wilkinson grievance*, August 30, 1984. Majority: M. Picher, White; dissent: Solberg — 13 pages. (47)

Attendance policy — draft attendance policy reached by mutual agreement. *Re Northwestern General Hospital & S.E.U. Local 204*; *attendance policy grievance*, August 29, 1984. M. Picher, Mustard, Lewis — 12 pages. (48)



Breach of personal appearance rule alleged — rule valid but employer estopped from enforcing it until grievor given notice; grievance allowed in part. *Re Burns Meats Ltd. & U.F.C.W. Local 139; Willyung grievance*, September 1984. Majority: Langille, Dinsdale; addendum: Robbins — 13 pages. (49)

Conduct detrimental to employer's reputation alleged — complaint from member of public — not established that grievor's conduct intentional; grievance allowed. *Re Bell Canada & Communication Workers, Local 27; Jackson grievance*, September 10, 1984. Majority: Kennedy, Switzman; dissent: Healy — 13 pages. (50)

Explosive and over-reactive behaviour to supervisor and customer — grievance denied. *Re Port Colborne, The Corp. of City of & C.U.P.E., Local 155; Cook grievance*, September 21, 1984. Boscariol — 4 pages. (51)†

Lateness — deliberate disobedience of management order; grievance dismissed. *Re Stelco Inc., Page-Hersey Works & U.E., Local 523; Rhodes grievance*, June 4, 1984. Majority: Welling, Storie; dissent: Bosnich — 5 pages. (52)

Lateness — progressive discipline imposed but employer not considering factors over which grievor had no control and therefore violating its own rules; grievance allowed. *Re Canon Inc. & Int'l. Molders and Allied Workers, Local 28; Levarno grievance*, September 20, 1984. Hunter — 13 pages. (53)

Leaving work station without permission — justified in circumstances; grievance allowed. *Re Dominion Chain, Division of Dominion Chain Inc. & I.A.M., Local 927; Davis grievance*, August 8, 1984. Sheppard — 11 pages. (54)†

Letter advising of unsatisfactory teaching performance — more than performance review; arbitrable as discipline. *Re Toronto, Board of Education of the City of, & Toronto Teachers' Federation; Hume grievance*, August 29, 1984. Majority: Kennedy, Lewis; dissent: Riddell — 22 pages. (55)

Misappropriation of employer's property — elements of theft established; grievance dismissed. *Re Fort Erie, Corp. of Town of & C.U.P.E., Local 714; Brooks grievance*, September 5, 1984. Barton — 9 pages (56)\*†

#### Employment Status

Part-time employee temporarily filling full-time position — retaining status as part-time employee. *Re Ottawa General Hospital & O.N.A.; Leech grievance*, see (2) *supra*. (57)

#### Evidence

*Ex post facto* evidence — admissible for limited purpose; matter to proceed despite application for judicial review to challenge ruling. *Re Steinberg Inc. & Commercial Workers Local 486; Lecuyer and Samson grievance*, September 20, 1984. Fraser — 11 pages. (58)\*†

#### Holidays

Lieu day — grievor not given reasonable latitude to choose lieu day; grievance allowed. *Re City of Timmins Home for the Aged (Golden Manor) & C.U.P.E., Local 1140; Glazier grievance*, September 12, 1984. Dunn — 3 pages. (59)

#### Holiday Pay

Qualifying days — absence due to imposition of disciplinary suspension — discipline appropriate; grievance dismissed. *Re Noranda Mines Ltd. & Canadian Union of Base Metal Workers; Lapierre grievance*, September 20, 1984. Adams — 18 pages. (60)

#### Hours of Work

Time spent travelling to conference — estoppel not applicable; entitled to be paid overtime rate; grievance allowed. *Re London and District Association for the Mentally Retarded & O.P.S.E.U.; Bazos, et al grievances*, September 24, 1984. Majority: Saltman, Beaulieu; dissent: Monteith — 11 pages. (61)\*

#### Illness

Back problem resulting in grievor being able to return only to limited duties — medical evidence not indicating grievor unemployable; grievance allowed. *Re Franklin Manufacturing & I.A.M., Lodge 1246; White grievance*, September 25, 1984. Majority: Shime, Lewis; dissent: Perron — 21 pages. (62)

Fitness to perform modified work — no obligation upon employer to create special position; grievance dismissed. *Re Brewers' Warehousing Co. Ltd. & United Brewers' Warehousing Workers' Provincial Board; Gloude grievance*, September 19, 1984. Barton — 12 pages. (63)

#### Job Evaluation

Payroll clerk — introduction of computers — grievance allowed in part. *Re Spruce Falls Power and Paper Co. Ltd. & O.P.E.I.U., Local 166; union grievance*. September 21, 1984. Lunney — 18 pages (64)†

#### Job Posting

*Bona fides* of posting where appointment of outsider well after posting — genuine vacancy; grievance dismissed. *Re Multi Fittings Ltd. & International Molders & Allied Workers, Local 49; union grievance*, September 18, 1984. R.J. Roberts — 8 pages. (65)

#### Job Vacancy

Existence of vacancy — employer's action not amounting to re-assignment; grievance allowed. *Re Hamilton Civic Hospitals & C.U.P.E., Local 794; policy grievance*, September 17, 1984. Dunn — 5 pages. (66)†

#### Lay-off

Bumping rights — bumping allowed only where a job vacancy created by lay-off; bumping incumbent junior employee from his job not allowed; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local Union 1005; Pace grievance*, May 29, 1984. Majority: Welling, Hines; dissent: Marshall — 6 pages. (67)

Notice given part way through the shift — company only obligated to give 4 working hours notice; grievance dismissed. *Re Massey-Ferguson Industries Ltd. & U.A.W., Local 458, Roach grievance*, August 28, 1984. McKechnie — 7 pages. (68)†

Qualifications — grievor entitled to training period; grievance allowed. *Re Massey-Ferguson Industries Ltd. & U.A.W., Local 458; Soordhar grievance*, September 25, 1984. Barton — 8 pages. (69)†

Qualifications — grievor not having requisite skill and ability; grievance dismissed. *Re Hanson Inc. & U.S.W.A., Local 14183; Williams grievance*, September 6, 1984. Majority: Brandt, Churchill-Smith; dissent: Barr — 6 pages (70)

Remedy where lay-off improper — general declaration that no prejudice should result; compensation of grievor not appropriate. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Gurman grievance*, September 12, 1984. Majority: Brent, Storie; dissent: Marshall — 5 pages. (71)\*

Timing of advance notice — employer commencing steps to give notice at correct time; grievance dismissed. *Re Canadian A.S.E. Limited & U.S.W.A., Local No. 8694; union grievance*, August 16, 1984. Adams — 4 pages. (72)

#### Leave of Absence

Education leave requested for writing examination — not required as grievors not scheduled to work at the time of the examination; grievance dismissed. *Re West Park Hospital, Toronto & O.N.A.; Colbert and McIntosh grievances*, September 17, 1984. Weatherill, McIntyre, Winkler — 7 pages. (73)

Special leave for exigencies of a personal nature — circumstances where applicable; all but one grievance dismissed. *Re Carleton University & C.U.P.E., Local 910; eight individual grievances*, September 4, 1984. Pyle — 32 pages. (74)

#### Management Rights

Creation of new part-time classification — not precluded by terms of collective agreement; grievance dismissed. *Re Fort Frances, the Corp. of the Town of & C.U.P.E., Local 65; policy grievance*, September 4, 1984. Davis — 8 pages. (75)†

#### Overtime

Cancellation of scheduled overtime — no obligation to pay for cancelled hours; grievances dismissed. *Re Stanley Precision Division of Stanley Canada Inc. & U.S.W.A., Local 4444; Harper and Gratto grievances*, September 10, 1984. Brent — 4 pages. (76)†

Meal breaks — estoppel not applicable; no entitlement to overtime pay for meal breaks; grievance dismissed. *Re Detour Lake Mine & I.U.O.E., Local 793; policy grievance*, September 11, 1984. Black — 12 pages. (77)†

Scheduled overtime withdrawn for safety reasons — withdrawal reasonable; grievance dismissed. *Re Raybestos Canada Inc. & U.S.W.A., Local 5141; Sampson grievance*, September 18, 1984. Willes — 9 pages. (78)†

#### Procedure

Adjournment requested — adjournment granted; costs not appropriate in circumstances. *Re Shoppers Meat Markets Ltd. & U.F.C.W., Local 633; union grievance*, September 18, 1984. Solomatenko — 9 pages. (79)†

#### Promotion

Discrimination alleged — grievor not treated in same manner as non employee; grievor to be given opportunity to compete on an equal footing when position next arises. *Re Metropolitan Toronto, the Municipality of & C.U.P.E., Local No. 79; Armstrong grievance*, Burkett — 18 pages. (80)

Qualifications — decision taken without adequately considering all facts and circumstances; employer required to re-evaluate candidates more carefully. *Re Sunnybrook Hospital & Sunnybrook Hospital Employees' Union Local 777, Singh grievance*, September 18, 1984. Foisy — 17 pages. (81)†

Qualifications — employer failing to interview applicants with regard to their related experience — employer obligated to review related work experience, grievance allowed. *Re Camco Inc. & U.E. Local 550; Papp grievance*, August 23, 1984. O'Shea — 12 pages. (82)

Qualifications — grievor not possessing all of required qualifications and not relatively equal to successful applicants; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Kargol grievance*, August 29, 1984. McKechnie — 11 pages. (83)

Qualifications — grievor not possessing qualifications equal to those of successful applicant; grievance dismissed. *Re Windsor Board of Education & C.U.P.E., Local 27, Morency grievance*, September 17, 1984. Majority: Gorsky, Bartlett; dissent: Hogan — 42 pages. (84)

Qualifications — grievor possessing approximately equal technical skills but lacking in interpersonal and communications skills; grievance dismissed. *Re Peterborough Civic Hospital & O.P.S.E.U. Local 345; Beauvais grievance*, September 12, 1984. Draper — 6 pages. (85)†

Qualifications — grievor possessing more seniority and previous satisfactory experience — grievor by-passed because it would be difficult to replace grievor in his existing position; grievance allowed. *Re Peterborough, Board of Park Management of the Corporation of the City of & C.U.P.E., Local 504, Ray grievance*, August 29, 1984. Delisle — 7 pages. (86)†

Qualifications — no requirement of trial period; grievance dismissed. *Re The Ottawa Roman Catholic Separate School Board & Service and Commercial Employees, Local 272; Patry and Gervais grievances*, August 29, 1984. Majority: D.W. Scott, Leblanc; dissent: Dunn — 14 pages. (87)

Qualifications — successful applicant possessing more experience; employer not guilty of discriminatory upgrading; grievance dismissed. *Re Camco Inc. & U.E., Local 550; Chisholm grievance*, September 2, 1984. Rayner — 10 pages. (88)

Qualifications — test unreliable; matter remitted to employer. *Re Great Lakes Forest Products Ltd. & Canadian Paperworkers, Local 39; Ellis grievance*, August 30, 1984. Davis — 22 pages. (89)†

Temporary promotion — no express provision in collective agreement and no established past practices; grievance dismissed. *Re Fort Frances, The Corp. of the Town of, & C.U.P.E., Local 65; Walton grievance*, September 14, 1984. Solomatenko — 11 pages. (90)†

Temporary vacancy — senior qualified employee on the shift entitled; grievance allowed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Local 1005; Mulryan grievance*, September 18, 1984. Hinnegan — 8 pages (91)†

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Posting of job — present vacancy unrelated to earlier layoff — company adhering to posting procedures; grievance dismissed. *Re Consumers Glass Company Limited & Aluminum, Brick and Glass Workers, Local 200G; Nenin grievance*, August 1, 1984. Springate — 24 pages. (92)\*

Qualifications — company requiring employees with broader qualifications than those of the grievor — not sufficient work available at grievor's level; grievance dismissed. *Re Koppers Engineered Products Limited & I.A.M., Lodge 717; Jenner grievance*, August 31, 1984. Saltman — 10 pages. (93)



### Res Judicata

Approach appropriate for arbitration — res judicata not applicable in particular circumstances. *Re Ontario Public Service Employees' Union and Ontario Public Service Staff Union; Nabi grievance*, September 10, 1984. Adams — 21 pages. (94)†

### Scheduling of Work

Change of assignments — no violation of collective agreement; grievance dismissed. *Re Hotel Dieu (St. Joseph's Hospital Windsor) & S.E.U., Local 210; policy grievance*, September 11, 1984. Brent; addendum: Burnell; dissent: Solberg — 17 pages. (95)

Mandatory rotation system of closing the bar alleged to be layoff — all employees benefitting from an equitable distribution of work hours; grievance dismissed. *Re Mr. Greenjeans (Adelaide) Limited & U.F.C.W., Local 725; Woods grievance*, September 25, 1984. M. Picher — 32 pages. (96)†

Temporary vacancy; "on-call" practice applicable — failure to contact grievor; grievance allowed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; individual grievance*, July 25, 1984. Majority: Welling, Marshall; dissent: Storie — 10 pages. (97)

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Casual employees — not acquiring seniority rights; grievance dismissed. *Re McKinlay Transport Ltd. & Teamsters, Local 880; Watson and Collins grievances*, September 10, 1984. Majority: Brent, Singleton; dissent: Petryshen — 11 pages. (98)

Extent of grievor's seniority in sample department — seniority rights qualified; grievance dismissed. *Re Krause Carpet Mills Ltd. & Krause Carpet Employees' Association; Bhati grievance*, September 21, 1984. Majority: Kates, Redford; addendum: Mayne — 15 pages. (99)

Probationary employees; assignment of seniority date where probationary period interrupted by lay-off — seniority date to be last date of hire prior to end of probationary period; grievance dismissed. *Re Camco Inc. & U.E. Local 550; Greenly grievance*, September 5, 1984. Barton — 5 pages. (100)†

Refusal of employment under Summer Placement Program — no accumulation of seniority; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; McAllister grievance*, September 18, 1984. Hinnegan — 15 pages. (101)†

### Sick Leave

Calculation of credit — calculated on basis of days worked rather than hours worked; grievance dismissed. *Re St. Joseph's Hospital, Guelph & O.N.A.; group grievance*, September 11, 1984. Majority: Knopf, Winkler; dissent: Gordon — 16 pages. (102)

### Sick Pay

Pregnancy complication — condition constituting illness; grievor entitled to sick pay. *Re Oshawa General Hospital & O.N.A.; Smith grievance*, September 10, 1984. Majority: Swan, Symes; dissent: Concilla — 20 pages. (103)\*

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Temporary transfer — not to be used to fill regular scheduled requirements; grievance allowed. *Re Timberjack, Division of Eaton Yale Ltd. & Int'l. Molders & Allied Workers, Local 246; policy grievance*, September 12, 1984. Rayner — 7 pages. (104)

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Superseniority — only protecting employment and not particular job; grievance dismissed. *Re Cannon Inc. & Int'l. Molders' and Allied Workers' Local 64; Gudelj grievance*, September 27, 1984. Dunn — 7 pages. (105)\*

Time off for grievance meetings — recording secretary entitled to be paid for attending arbitration hearing; grievance allowed. *Re City of Timmins Home for the Aged (Golden Manor) & C.U.P.E., Local 1140; Marenger grievance*, September 12, 1984. Dunn — 4 pages. (106)

### Union Rights

Payment of authorized union representative — including vice president of union; estoppel not applicable; grievance allowed. *Re Massey-Ferguson Industries Ltd. & U.A.W., Local 439; policy grievance*, August 30, 1984. Saltman — 11 pages. (107)†

### Union Security

Foremen — foremen required to be union members; grievance allowed but decision to be stayed for 30 days to allow application to Labour Relations Board. *Re The Daily Times & Toronto Typographical Union, No. 91; union grievance*, August 30, 1984. Majority: Saltman, Buhler, dissent: Farrell — 26 pages. (108)

### Vacations

Entitlement — "week" meaning period of seven days and not working week; grievance allowed. *Re Consumers Glass Co. Ltd. & United Glass and Ceramic Workers, Local 200; Mayerhofer grievance*, September 5, 1984. Little — 14 pages. (109)

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Service increments for part-time employees — employer's calculations correct; grievance dismissed. *Re City of Timmins Home for the Aged (Golden Manor) and C.U.P.E., Local 1140; Woon grievance*, September 12, 1984. Dunn — 4 pages. (110)

Temporary assignment premium — lead hands temporarily assigned as foremen; grievance allowed. *Re Nestle Enterprises Ltd. & R.W.D.S.U., Local 488; Patenauck, et al grievances*, September 24, 1984. Emrich — 13 pages. (111)

Temporary transfer to lower-rated classification — employer obligated to allow grievor to retain his average earned rate; grievance allowed. *Re Kelsey-Hayes Canada Limited (Eureka Foundry Plant) & U.A.W. Local 636; Earle grievance*, September 13, 1984. R.J. Roberts — 7 pages. (112)

Temporary transfer to a lower rated job — employer obligated to pay grievor at rate of her previous higher-rated position; grievance allowed. *Re McGaw Manufacturing Division of McGaw Supply Ltd. & U.A.W. Local 397; Brzoska grievance*, September 25, 1984. Weatherill — 9 pages. (113)

### Welfare Plans

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### Work Assignment

Lift truck work — job descriptions not detailed; grievance dismissed. *Re Fleet Industries, Division of Ronyx Corp. Ltd. & I.A.M., Lodge 171; Thibodeau grievance*, September 20, 1984. O'Shea — 21 pages. (115)

Pupil-teacher ratio — employer breaching ratio; damages appropriate remedy. *Re Bruce County Board of Education & O.S.S.T.F.; policy grievance*, August 27, 1984. P. Picher, Merritt, Smith — 7 pages. (116)

Use of students — estoppel not applicable; grievance dismissed. *Re Zymaize Co. & U.F.C.W.; Rogers grievance*, September 12, 1984. Majority: Barton, Dale; dissent: Dayman — 9 pages. (117)

Use of temporary employee — violation of collective agreement; damages for lost overtime opportunity; no damages for loss of professional experience. *Re Canadian Broadcasting Corporation & Canadian Wire Service Guild; policy grievance*, August 31, 1984. Majority: Saltman, Lewis; dissent: Healy; addendum: Lewis, — 20 pages. (118)

### Workers' Compensation

Deduction of workers' compensation payments from salary — not extending to permanent partial disability pension; grievance allowed. *Re Alexandria, Board of Commissioners of Police for the Town of, & Alexandria Police Association; Legroulx grievance*, May 28, 1984. D.W. Scott — 12 pages. (119)

### Construction Industry Arbitration — Ontario Labour Relations Board

The following award was filed with the Office of Arbitration during the month of December, 1984.

#### Collection

Welfare benefits — payment ordered with interest and damages for persistent failure to pay. *Re Standard Insulation Ltd. & International Association of Heat and Frost Insulators and Asbestos Workers, Local 95*; November 15, 1984. Davis, Grant, Collins — 12 pages. (120)

### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of December, 1984.

*Sunnyside Home (Regional Municipality of Waterloo) and L.D.S.W.U., Local 220 (full-time & part-time)*; Majority: Waisglass, Boehmer; dissent: Lewis — 10 pages.

*St. Lawrence Estate & C.U.P.E., Local 1919*; Majority: H.D. Brown, Comrie; addendum: Robbins — 12 pages.

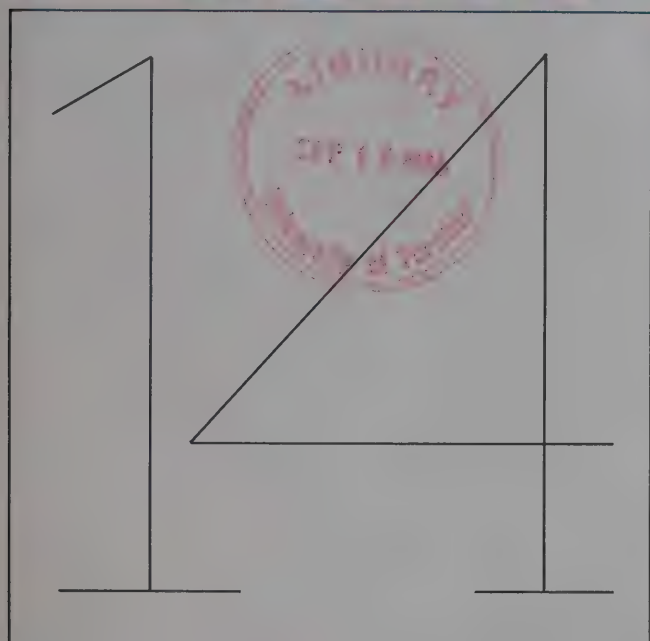
*Participating Nursing Homes (29 in number) (Extendicare, et al) and S.E.U., Locals 183, 204, 219, 268, 478, 532 & L.D.S.W.U., Local 220*; Palmer, Shibley, Lewis — 34 pages.

*Marshall Gowland Manor (Corp. of the City of Sarnia) & London and District Service Workers Union, Local 220*; Interim Award: Majority: R.J. Roberts, Drmaj; addendum: Robbins — 15 pages.





# Monthly Bulletin



Ontario Ministry of Labour



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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of October, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Settlement established — breach of settlement need not be subject to second grievance; parties directed to comply with settlement. *Re Westfair Foods Ltd. & U.F.C.W.U., Loc. 1000A, Region 18; Palmer grievance*, April 23, 1984. Majority: Langille, Lewis: dissent: Piercy — 27 pages. (1)

Scheduling of work — difference arising under collective agreement; express restriction of arbitrability void. *Re Windsor Arms Hotel Ltd. & Food and Service Workers of Canada; Clavijo grievance*, October 4, 1984. Solomatenko — 11 pages. (2)†



**Bargaining Unit**

Purchase of business — conflict of recognition clauses; proceedings adjourned for matter to be resolved by O.L.R.B.; *Re Ault Dairies & Milk and Bread Drivers, Loc. 647; & R.W.D.S.U., Loc. 440; Hunt grievance, October 9, 1984. Pyle — 10 pages. (3)†*

Secretary, Pricing Assistant — not excluded as "specialist"; grievance allowed. *Re Wabco Ltd. & U.E., Local 559; union grievance, October 12, 1984. Majority: Weatherill, Davidson; dissent: Healy — 14 pages. (4)*

Staff recreologist — not a "technical employee"; job falling within the bargaining unit; grievance allowed. *Re The Perley Hospital & C.U.P.E., Local 870; union grievance, September 24, 1984. Roach — 19 pages. (5)\**

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Letter of understanding is not part of collective agreement; grievance not arbitrable. *Re Brant County Board of Education & O.S.S.T.F., Brant District Five; policy grievance, October 23, 1984. Majority: Brandt, Merritt, dissent: Bruce — 14 pages. (6)*

**Contracting Out**

Cleaning operations — *bona fide* contracting out; grievance dismissed. *Re Steinberg Inc. & U.F.C.W.U., Local 633; policy grievance, October 9, 1984. McKechnie — 24 pages. (7)†*

Economic feasibility — work not sufficient to fill a regular work load; grievance dismissed. *Re Hayes-Dana Inc. & U.A.W., Local 676; Werner grievance, September 26, 1984. Weatherill — 7 pages. (8)*

Use of piggy-back services — restriction applying only where regular highway drivers available at terminal of origin; grievance dismissed. *Re Direct Transport & Teamsters Union, Local 186; Brown grievance, October 18, 1984. Majority: Hunter, McMillan; dissent: Baillargeon — 13 pages. (9)*

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Reinstatement after six-week suspension — grievor making efforts to mitigate; calculation of damages. *Re Le Page's Ltd. & E.C.W.U., Local 819; Mahal grievance, October 10, 1984. McKechnie — 14 pages. (11)†*

**Demotion**

Non-disciplinary — grievor not possessing skills required in a higher classification; grievance dismissed. *Re Hershey Canada Inc. & R.W.D.S.U.; Kirkwood grievance, June 22, 1984. Majority: Delisle, Wolfenden; dissent: Barron — 12 pages. (12)*

Physical ability to perform job questioned after three vehicle accidents — employer reasonable in removing grievor to a different position while reassessing his physical capacities; grievance dismissed. *Re Hendrie & Company Limited & Canadian Brotherhood of Railway Transport and General Workers; Smith grievance, September 28, 1984. H.D. Brown, Redford, Weisbach — 14 pages. (13)*

Work record poor — frequent accidents and extended absences — grievor unable to perform job properly; grievance dismissed. *Re The Algoma Steel Corporation Limited & U.S.W.A., Local 2251; Kyle grievance, October 10, 1984. Black, Morley, Woodcock — 8 pages. (14)*

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Absence because of long term illness — discharge not appropriate; grievance allowed. *Re Nelson Burns & Co. Ltd. & International Leather Goods, Plastics & Novelty Workers, Local 8; Singh grievance, October 16, 1984. Hearn — 18 pages. (15)†*

Absence without authorization — progressive discipline not applied and employees not treated equally, grievance allowed. *Re Peel Memorial Hospital & S.E.U., Local 204; Verbeem grievance, October 1, 1984. Langille, MacDonald, Maguire — 14 pages. (16)*

Absence without notice — record of absenteeism; culminating incident; grievance dismissed. *Re Webster Manufacturing & Int'l. Molders & Allied Workers, Local 49, Winhush grievance, October 1, 1984. H. Brown — 15 pages. (17)*

Absenteeism — conditional reinstatement with no compensation. *Re Certified Brakes & U.S.W.A.; Roma grievance, October 11, 1984. Baum — 15 pages. (18)*

Absenteeism — employer not showing grievor incapable of regular attendance in the future; conditional reinstatement. *Re Raybestos Canada Inc. & U.S.W.A., Local 5141; Dunstan grievance, October 4, 1984. Thorne — 14 pages. (19)†*

Absenteeism — grievor unable to provide reasonable attendance for a continuing period of time; grievance dismissed. *Re Certified Brakes, A Division of Lear Siegler Industries Limited & U.S.W.A., Local 14381; Morra grievance, October 10, 1984. O'Shea — 23 pages. (20)*

Alcohol impairing ability while in charge of a vehicle — impairment not clearly proven by employer; one month suspension substituted. *Re London, Corporation of City of, & London Civic Employees, Local 107; Watson grievance, September 30, 1984. Brandt — 13 pages. (21)†*

Attack upon security guard — level of violence low; substitution of lengthy suspension. *Re Leco Incorporated & E.C.W.U., Local 819; Broomfield grievance, October 19, 1984. Davis — 13 pages. (22)†*

Consumption of alcohol while working — grievor's work record good; conditional reinstatement. *Re Northern Beverage Company & United Brewery Workers, Local 316; Jonker grievance, October 2, 1984. Aggarwal — 13 pages. (23)†*

Culminating incident; rejection of supervisory authority — grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; Doyle grievance, September 10, 1984. H. Brown — 42 pages. (24)*

Dangerous work practice — grievor disciplined originally by being demoted, then discharged later for the same incident; no cause for second imposition of discipline; grievance allowed. *Re Emery Industries Limited & Canadian Conference of Teamsters Chemical, Energy and Allied Workers Division Local 1552; Murley grievance, October 4, 1984. Weatherill — 8 pages. (25)*

Dishonesty — grievor pocketing money from some drinks and serving "freebies" to friends; dishonesty proven; grievance dismissed. *Re Chez Moi Tavern & International Beverage Dispensers' & Bartenders' Local 280*; Stephen grievance, October 2, 1984. Barton — 9 pages. (26)†

Dishonesty — major misconduct involving fraudulent Workers' Compensation claims — flagrant abuse of I.O.D. plan shown; grievance dismissed. *Re Canada Post Corporation & Letter Carriers' Union*; Dewson grievance, September 25, 1984. Jolliffe — 21 pages. (27)

Failure to respond to recall — grievor having constructive notice of recall notice; grievance dismissed. *Re Fruehauf Canada Inc. & U.A.W.*; Rankel grievance, October 11, 1984. O'Shea — 12 pages. (28)

Insubordination — avoidance of instructions tantamount to refusal to obey; substitution of two-month suspension. *Re Cronkwright Transport Ltd. & Teamsters, Local 879*; Clarkson grievance, October 12, 1984. Davis — 14 pages. (29)†

Loss of driver's licence for 3 months — grievor requiring a licence to perform his duties, — grievor to be reinstated following the termination of licence suspension. *Re Northern and Central Gas Corporation & E.C.W.U.*; Rochon grievance, October 9, 1984. McKechnie — 12 pages. (30)†

Negligence causing explosion and fire at company's service centre — Murray's actions warranting discharge; Powell's degree of responsibility less, therefore suspension substituted for discharge; *Re Thames Valley Beverages Limited & Soft Drink Workers Joint Local Executive Board of Ontario*; Murray and Powell grievances, October 15, 1984. Burkett — 15 pages. (31)

Probationary employee released because still employed elsewhere — no discrimination; grievance dismissed. *Re Sudbury Memorial Hospital & O.N.A.*; Bryce grievance, October 10, 1984. Majority: Brent, Winkler; dissent: Mayne — 17 pages. (32)

Procedure — substantial compliance with requirement of preliminary hearing. *Re Voyageur Colonial Ltd. & Canadian Brotherhood of Railway, Transport & General Workers*; Essery grievance, September 28, 1984. Majority: P. Picher, Madigan; dissent: Beckwith — 38 pages. (33)

Quit alleged — grievor having fair representation from union; grievance dismissed. *Re Bristol-Myers Pharmaceutical Group Division of Bristol-Myers Canada Ltd., & U.A.W., Local 1538*; McKinnon grievance, September 20, 1984. Samuels — 8 pages. (34)

Section 61.5 of *Canada Labour Code* — undertaking falling under federal jurisdiction, adjudicator having jurisdiction to proceed. *Re Greenberg Cartage Ltd. & E.M. Hearn*; E. Hearn grievance, October 22, 1984. Aggarwal — 31 pages. (35)

Unsafe driving — established on evidence; grievance dismissed. *Re Voyageur Colonial Ltd. & Canadian Brotherhood of Railway, Transport & General Workers*; Essery grievance — see (33), *supra* (36)

Work performance — grievor involved in street car accident resulting in the death of a pedestrian — poor record with progressive discipline being applied; grievor to be reinstated in first open job not requiring operation of T.T.C. vehicles. *Re Toronto Transit Commission & A.T.U. Local 113*; Dockrill grievance, February 22, 1983. Majority: Egan, Walsh; dissent: Hetz — 6 pages. (37)

## Discipline

Absence — grievor not working assigned shift. — absence not justified by overtime provisions of *Employment Standards Act*; grievance dismissed. *Re Firestone Canada Inc. & United Rubber Workers, Local 113*; Magill grievance, October 1, 1984. Barrett — 9 pages. (38)†

Absenteeism — leaving shift early — discipline justified, but penalty modified to disciplinary notations without docking pay. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005*; Bartolacci *et al* grievance, October 4, 1984. Majority: Kennedy, Marshall; dissent: Morley — 15 pages. (39)\*

Absenteeism — progressive discipline applied — one day suspension reasonable; grievance dismissed. *Re Burndy Inc. & I.A.M. Lodge 2546*; Cowan grievance, October 10, 1984. Majority: Brunner, Powell; dissent: Lewis — 7 pages. (40)

Abuse of patient — disciplinary response appropriate; grievance dismissed. *Re St. Catharines General Hospital & O.N.A.*; individual grievance, October 16, 1984. MacDowell, Rogers; addendum: Mayne — 10 pages. (41)

Alcohol impairing ability to work — previous discipline for alcohol related matter, — suspension justified; grievance dismissed. *Re London, Corporation of the City of & London Civic Employees, Local 107*; Kay grievance. See (21), *supra* (42)†

Attendance of meeting to discuss off-duty accidents — employer not having sufficient business interest to justify calling employees to investigation meetings after every off-duty accident; grievance allowed. *Re Bell Canada & Communications Workers*; Burton grievance, September 28, 1984. Majority: P. Picher, Robbins; dissent: Fillion — 27 pages. (43)\*

Failure to follow instructions resulting in grievor's level of productivity being low; refusal to work overtime — discipline justified; grievance dismissed. *Re Bell Canada & Communications Workers*; Ward grievance, September 28, 1984. Majority: P. Picher, Sinclair; dissent: Beaulieu — 22 pages. (44)

Fighting — use of force against fellow employee — just cause for discipline; grievance dismissed. *Re Kendall Canada & U.S.W.A., Local 8505*; Mischitelle and Power grievance, October 18, 1984. O'Shea — 15 pages. (45)†

Inebriation on job — grievors sent home when alcohol discovered and given further suspensions later; cumulative evidence of impairment minimal; first discipline appropriate and further discipline inappropriate. *Re Domtar Construction Materials & U.S.W.A. Local 14994*; Booker & Brown grievances, October 2, 1984. Barrett — 10 pages. (46)†

Insubordination and unauthorized absences — twelve-day suspension not excessive grievance dismissed. *Re Huron County Board of Education & O.S.S.T.F.*; Young grievance, October 10, 1984. Majority: Hunter, Pensa; dissent: Allan — 21 pages. (47)

Insubordination — failure to follow instructions — insubordination not established; grievance allowed. *Re Dominion Stores Limited Department Managers & R.W.D.S.U., Local 414*; Nelles grievance, October 22, 1984. Brandt, Blair, MacDonald — 10 pages. (48)



Insubordination to foreman alleged — grievor having strong and aggressive makeup, but no use of force shown; 3½ day suspension reduced to one day suspension. *Re Toronto Electric Commissioners & C.U.P.E. Local 1, Slade grievance*, October 4, 1984. Dunn — 7 pages. (49)

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Medication error — discipline warranted but mitigating circumstances; reference to counselling session to be removed from grievor's record. *Re Ottawa Civic Hospital & O.N.A.; Drew grievance*, April 2, 1984. Abbott, Mustard; addendum: Mustard; partial dissent: McIntyre — 34 pages. (51)

Vehicle accident — accident avoidable, written warning justified. *Re Scarborough, Public Utilities Commission of The City of & Utility Workers of Canada, Local 1; Veitch grievance*, September 27, 1984. Majority: Brandt, Gray; did not concur: Bern — 13 pages. (52)

Work left uncompleted due to a commitment to Boy Scouts — grievor not disciplined for a similar offence previously; written warning substituted for one day suspension. *Re Bell Canada & Communications Workers; Bigney grievance*, October 15, 1984. Springate; dissent: Healy; partial dissent: Robbins — 28 pages. (53)

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Calculation of sick leave credits — union estopped from challenging employer's interpretation until expiry of collective agreement; grievance dismissed. *Re Toronto Harbour Commissioners & C.U.P.E., Local 86; Genites grievance*, October 17, 1984. Brent, Churchill-Smith, Whitney — 9 pages. (54)

Existence of estoppel — elements of representation and reliance not sufficiently strong; grievance dismissed. *Re Molson's Brewery (Ontario) Ltd. & Union of United Brewery Workers, Local 304; policy grievance*, September 30, 1984. McLaren — 19 pages. (55)

#### Grievance Procedure

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Timeliness — reasonable grounds for extending time limits. *Re Hudson Sportswear Ltd. & United Garment Workers, Local 253; group grievance*, October 5, 1984. Betcherman — 6 pages. (57)†

Timeliness — time limit directory; grievance arbitrable. *Re McKinlay Transport Ltd. & Teamsters, Local 879; Latendresse grievance*, October 12, 1984. Majority: Brent, Shalkie; dissent: McMillan — 10 pages. (58)

Timeliness — union failing to establish reasonable grounds for extension; grievance not arbitrable. *Re Carborundum Canada Inc. & U.S.W.A., Local 4151; Warriner grievance*, September 19, 1984. Majority: H.D. Brown, Dwyer; dissent: Urhanovics — 23 pages. (59)\*

#### Holiday Pay

Qualifying days — grievor establishing "verified illness" without medical certificate; grievance allowed. *Re Pyrotenax of Canada Ltd. & U.E., Local 537; Juby grievance*, October 3, 1984. Majority: Knopf, Knipfel; dissent: Watt — 10 pages. (60)\*

Qualifying shift; grievors leaving shift early — substantial compliance; grievors entitled to statutory holiday allowance for following day. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; Bartolacci et al grievance*. See (39), *supra* (61)\*

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Requirement to produce medical certificate for every illness — inconsistent with terms of collective agreement; grievance allowed. *Re Toronto, City of & C.U.P.E., Local 79; Dubas grievance*, October 10, 1984. M. Picher — 22 pages. (62)\*

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Availability of work — lack of work established; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Local 414; Sul grievance*, August 17, 1984. Majority: Scott, Blair; dissent: Dunn — 13 pages. (64)

Bumping rights — employer improperly deferring bump; grievance allowed. *Re Stanley Precision & U.S.W.A., Local 4444; Bhardwoj grievance*, October 10, 1984, Hunter — 10 pages. (65)†

Employees hired for specific term — terms of hiring inconsistent with collective agreement; employees entitled to lay-off provisions. *Re Canada Post Corporation & Canadian Postmasters' and Assistants' Association; union grievance*, October 12, 1984. Kates — 16 pages. (66)

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Qualifications — grievor's ability to perform alternate job and seniority established; grievance allowed. *Re Acco Canadian Material Handling (Division of Dominion Chain Inc.) & U.A.W., Local 525; Miranda grievance*, September 27, 1984. Majority: Betcherman, Taylor; dissent: Gloss — 14 pages. (68)

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Transfer from electrician position to handyman position because of lack of work constituting lay-off; grievance allowed. *Re Ottawa, The Corporation of City of, & Ottawa-Carleton Public Employees Union, Local 503; Woodward et al grievances*, July 31, 1984. Majority: Scott, Switzman; dissent: Gladu — 15 pages. (70)\*

Use of subsidized student help — resulting lay-off of permanent employee improper; grievance allowed. *Re Gosfield South, The Corporation of Town of & Teamsters, Local 880, Wilkins grievance*, October 5, 1984. Gandz — 10 pages. (71)†

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Rule requiring employees to remain within city limits while on call — rule reasonable; grievance dismissed. *Re Kitchener, The Corporation of City of & I.B.E.W., Local 2345; Sprasm grievance*, September 13, 1984. Gandz — 12 pages. (72)†

Training in use of new twenty-four inch night stick — employer not required to offer training; grievance dismissed. *Re Haldimand-Norfolk Regional Board of Commissioners of Police & Haldimand-Norfolk Police Association; grievance relating to nightsticks*, September 19, 1984. Adams — 12 pages. (73)

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Calculation of overtime — week meaning period of seven consecutive days; grievance allowed. *Re Red Oak Inn & Hotel Employees Restaurant Employees Union, Local 75; Policy grievance*, October 20, 1984. Gandz — 9 pages. (74)†

Distribution — employer to have reasonable time to achieve equitable apportionment; grievance dismissed. *Re Varta Batteries Ltd. & U.A.W., Local 124; Mansour grievance*, October 17, 1984. Hinnegan, MacLeod, Bruce — 5 pages. (75)

Distribution — made as equitably as possible; grievance dismissed. *Re Toronto, The Corporation of City of & Metropolitan Toronto Civic Employees Union, Local 43; Morris grievance*, September 28, 1984. Davis — 6 pages. (76)†

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Discharge while discipline grievances pending — discharge grievance to be adjourned pending outcome of discipline grievances. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Local 112; Vassell grievance*, October 23, 1984. Dunn — 6 pages. (78)\*†

### Promotion

Qualifications — grievor's experience in the main job functions falling far short of Company's requirements; grievance dismissed. *Re Northern Telecom Canada Limited & Communications Workers, Local 9; Walker grievance*, October 1, 1984. Weatherill — 9 pages. (79)

Qualifications — grievor's lack of reliability relevant; grievance dismissed. *Re Stouffer's, Division of Nestle Enterprises Ltd. & S.E.U., Local 183; Lloyd grievance*, October 23, 1984. Simmons — 10 pages. (80)

### Remedies

Direction that grievor be returned to comparable position — compliance with direction even though new job involving more commuting. *Re Nipissing District Roman Catholic Separate School Board & Local Branch Affiliates (A.E.F.O. & O.E.C.T.A.)*; *Kennedy grievance*, October 15, 1984. Majority: Weatherill, Klein; dissent: Fishbein — 11 pages. (81)

### Res Judicata

Previous award ruling on issue — ruling obiter but not challenged by employer; ruling not clearly wrong; grievance allowed. *Re Sidbec-Dosco Inc. & U.S.W.A., Local 5629; grievance re article 22.01*, October 2, 1984. Teplitsky — 4 pages. (82)

### Scheduling of Work

Changes in shift schedule because of vacations and sickness — changes proper; grievance dismissed. *Re Haldimand-Norfolk Regional Board of Commissioners of Police & Haldimand-Norfolk Police Association; shift scheduling grievance* — see (73), *supra* (83)

Irregular shift change alleged — only change of hours within shift; grievors not eligible for premium rate; grievance denied. *Re T.R.W. Canada Ltd., Thompson Products Division & Thompson Products Employees' Association; Atkinson & Poole grievance*, June 15, 1984. Majority: Langille, Orsini; dissent: Tate — 21 pages. (84)

Letter of understanding — restricting employer's right to schedule; grievance allowed. *Re Royal Canadian Legion Branch No. 9 & Hotel, Restaurant & Cafeteria Employees, Local 75; policy grievance*, October 10, 1984. Little — 8 pages. (85)†

Special duty — assignments need not be made on voluntary basis; grievance dismissed. *Re Haldimand-Norfolk Regional Board of Commissioners of Police & Haldimand-Norfolk Police Association grievance relating to special duty* — see (73,83), *supra* (86)

### Seniority

Supervisors — entitled to exercise seniority acquired while in bargaining unit; grievance dismissed. *Re Kingston Spinners (Canada) Ltd. & Amalgamated Clothing & Textile Workers, Local 1881; Leeman grievance*, October 10, 1984. Lyon — 5 pages. (87)†

### Sick Leave

Calculation of credits — grievor entitled to accumulate sick leave credits while on sick leave; grievance allowed. *Re St. Raphael's Nursing Home & London & District Service Workers' Union, Local 220; George grievance*, October 17, 1984. Welling — 7 pages. (88)†

Effect of ceiling — directed against carrying forward of unused credits from year to year; not an absolute maximum upon accumulation; grievance allowed. *Re Federated Building Maintenance Co. Ltd. & Food & Service Workers; policy grievance*, October 11, 1984. Brunner — 8 pages. (89)†

### Sick Pay

Absence due to custodial detention under the Criminal Code — grievor's absence not caused by illness; grievance dismissed. *Re Etobicoke Board of Education for the Borough of & O.S.S.T.F., District 12; individual grievance*, October 16, 1984. Majority: Brunner, Baker; dissent: Ryder — 12 pages. (90)\*



### Transfer

Assignment to another location — not constituting transfer; grievance dismissed. *Re Haldimand-Norfolk Regional Board of Commissioners of Police & Haldimand-Norfolk Police Association; Segui grievance* — see (73,83,86), *supra* (91)

Senior employee denied transfer — transfer of more junior employee not for "employee development"; grievance allowed. *Re Bell Canada & Communication Workers; Worthington grievance*, October 9, 1984. Majority: Burkett, Beaulieu; dissent: Filion — 19 pages. (92)

Transfer effected without consulting grievor or without canvassing other employees — employer obligated to do so; grievance allowed. *Re Steinberg Inc. & Commercial Workers, Local 486; Chambers grievance*, October 11, 1984. Pyle — 16 pages. (93)†

### Travel Expenses

Authorization — grievor failing to show express authorization; grievance denied. *Re O.P.S.E.U., & Ontario Public Service Staff Union; Best grievance*, October 10, 1984. Swan — 6 pages. (94)

### Union Rights

Compensation for time spent discussing or filing grievance — no entitlement; grievance dismissed. *Re Camco Inc. & U.E., Local 550; policy grievance*, June 12, 1984. Baum — 12 pages. (95)†

Payment while attending O.L.R.B. proceedings — past payments not representatives of future payments; grievance dismissed. *Re Fleet Industries a Division of Ronyx Corporation Ltd., Fort Erie, Ontario & I.A.M., Lodge 939; Union grievance*, October 12, 1984. Brunner — 10 pages. (96)

Placement of union bulletin board — employer's actions breaching obligation to provide bulletin board; grievance allowed. *Re Ottawa-Carleton Regional Transit Commission & Independent Canadian Transit Union, Local 5; union grievance*, October 12, 1984. Kates, Vice; addendum: Harnden — 16 pages. (97)

### Vacations

Employees absent because of illness — employer entitled to schedule vacations for these employees during period of absence; grievance dismissed. *Re Guelph Engineering Co. Ltd. & U.S.W.A., Local 4474; vacation entitlement grievance*, October 11, 1984. Majority: Shime, Redford; dissent: Reeds — 14 pages (98)\*

Extended vacation denied — employer acting reasonably; grievance dismissed. *Re O.P.S.E.U. & Ontario Public Service Staff Union; Rosen grievance*, October 11, 1984. Solomatenko — 12 pages. (99)†

Scheduling — not "practicable" to give grievor preferred period; grievance dismissed. *Re Hamilton-Wentworth, Regional Municipality of & C.U.P.E., Local 167; Davies grievance*, March 9, 1984. Beck — 19 pages. (100)

Scheduling — vacation scheduled during plant shutdown, but some junior employees scheduled to work — no breach of agreement; grievance dismissed. *Re Abbott Laboratories Ltd. & R.W.D.S.U., Local 440; policy grievance*, October 10, 1984. Majority: Emrich, Ruddy; dissent: Barron — 18 pages. (101)

### Wages

Educational allowance for Bachelor's Degree in Nursing — grievor using University training directly in discharge of duties as a general staff nurse; employer obligated to pay allowance; grievance allowed. *Re Parry Sound General Hospital & Ontario Nurses' Association; Hall grievance*, June 27, 1984. Majority: Lunney, Gordon; dissent: Baldwin — 12 pages. (102)

Incentive rate — evidence not establishing that rate inappropriate; grievance dismissed. *Re Sunbeam Corporation (Canada) Ltd. & U.E., Local 566; Dyer grievance*, September 27, 1984. Swan — 19 pages. (103)†

Placement on wage progression scale where newly unionized store — no violation of collective agreement; grievance dismissed. *Re Zehr Markets & U.F.C.W.U., Local 1977; Sutherland grievance*, October 9, 1984. Welling — 9 pages. (104)†

Temporary overpayment — employer entitled to revert to wage scale; grievance dismissed. *Re Crest Motor Hotel Ltd. & Hotel Employees Restaurant Employees, Local 75; policy grievance*, October 15, 1984. Aggarwal — 14 pages. (105)†

### Welfare Plans

Long term disability benefits — insurance policy not overriding terms of collective agreement; grievance allowed. *Re Metropolitan Board of Commissioners of Police & Metropolitan Toronto Police Association; Moskaluk grievance*, October 4, 1984. M. Lerner — 24 pages. (106)

Make-up pay where compensable injury — not to commence until after two days absence; grievance dismissed. *Re Gray Forgings Stampings Ltd. & Communications Workers, Local 557; Lowler grievance*, September 29, 1984. Majority: Brandt, Glass; dissent: Hutchens — 6 pages. (107)

Payment of premiums while on workers' compensation and long term disability leave — no entitlement; grievance dismissed. *Re Royal Victoria Hospital of Barrie & S.E.U., Local 204; Zecca grievance*, April 30, 1984. Swan, Sergeant, Lewis — 13 pages. (108)

### Work Assignment

Foreman performing bargaining unit work for quarter of shift — employer having right to use personnel in most efficient way possible; overtime not an issue, grievance dismissed. *Re Courtice Steels Limited & U.S.W.A.; Shaw grievance*, September 24, 1984. Betcherman — 4 pages. (109)

Improper assignment outside bargaining unit alleged — not appropriate to consider impact on other bargaining unit; members of other bargaining unit not entitled to notice. *Re Ault Dairies & Milk & Bread Drivers, Local 647; policy grievance*, October 11, 1984. Knopf — 6 pages. (110)†

Part-time mail service couriers assigned to more than one route — matter to be taken to a third party inclusive of the Manpower Committee. *Re Canada Post Corporation & The Letter Carriers' Union of Canada; Romeau grievance*, September 24, 1984. Kates — 7 pages. (111)

Re-organization within office — no reduction of personnel — employees not suffering from loss of hours, wages or benefits; grievance dismissed. *Re Fanshawe College of Applied Arts & Technology, & O.P.S.E.U.; (Support Staff Employees); policy grievance*, October 15, 1984. Majority: Brunner, Gray; dissent: McManus — 19 pages. (112)

### **Construction Industry Arbitration — Ontario Labour Relations Board**

The following award was filed with the Office of Arbitration during the month of January, 1985.

#### **Collection**

Failure to use union labour — payment of lost wages and benefits directed. *Re Marel Contractors Enterprises Ltd. & Resilient Floorworkers, Local Union, 2965 (U.B.C.J.A.)*, December 5, 1984. Furness, Murray, Wilson — 2 pages. (113)

#### **The Hospital Labour Disputes Arbitration Act**

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of January, 1985.

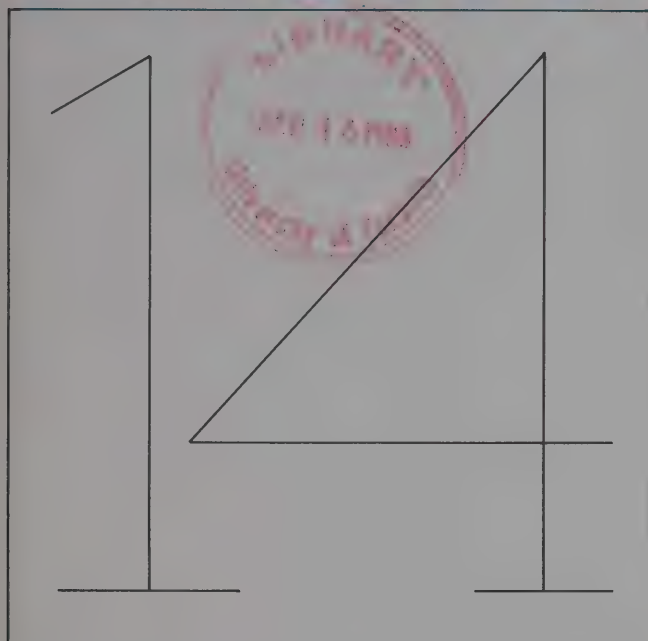
*Sisters of St. Joseph's of the Diocese of London, operating St. Joseph's Hospital, Chatham & S.E.U., Local 210*; McLaren, Mustard, Solberg — 16 pages.

*Northwestern General Hospital & S.E.I.U., Local 204*; Majority: Kates, Mustard; dissent in part: McDonald — 18 pages.





# Monthly Bulletin



Ontario Ministry of Labour



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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of November 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A.,

B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Discharge of probationary employee — employer having the right to discharge probationary employees; grievance dismissed. *Re Gray Forgings & Stampings Ltd. & Communication Workers, Local 557; Ahearn grievance*, November 9, 1984. Majority: Kennedy, Glass; dissent: Hutchens — 13 pages. (1)

Filling of temporary vacancy — no-discrimination clause applying to exercise of general managerial prerogative; grievance arbitrable. *Re Toronto Public Library Board & C.U.P.E., Local 1996; Marcilio grievance*, November 12, 1984. Kates, McDonald, Pollock — 15 pages. (2)\*



Promotion outside bargaining unit — collective agreement not applicable; no estoppel; grievance dismissed. *Re Corporation of the City of York & C.U.P.E., Local 10; Bayley grievance*, November 6, 1984. Adams — 14 pages. (3)

Section 45 — referral may be made where parties extend time limits; referral may be made even though arbitration process under collective agreement initiated. *Re Massey-Ferguson Industries Ltd. & U.A.W., Local 438, Halas and Consentini grievances*, November 23, 1984. Solomatenko — 16 pages. (4)\*†

Settlement alleged — union's conduct creating estoppel; grievance dismissed. *Re Galtaco Inc. & International Molders & Allied Workers; Scannell grievance*, November 16, 1984. Hunter — 9 pages. (5)

Timeliness of s.45 application — application timely; grievance arbitrable. *Re Ramada Hotel Don Valley & Hotel Employees Restaurant Employees, Local 75; Guirgus grievance*, November 2, 1984. Wilson — 7 pages. (6)†

Timeliness of s. 45 application — no time stipulated for referring grievance to arbitration; grievance arbitrable. *Re Transit Windsor & Amalgamated Transit Union, Local 616; union grievance*, November 12, 1984. E.B. Jolliffe — 21 pages. (7)†

#### Bargaining Unit

Supervisor of Social Assistance — real and substantial change from duties of comparable bargaining unit position; position outside bargaining unit; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Local 79; policy grievance*, November 21, 1984. McLaren, Beresford, Lewis — 20 pages. (8)

#### Benefits

Provision of leased vehicle — grievor not holding valid driver's licence; grievance dismissed. *Re O.P.S.E.U. & Ontario Public Service Staff Union; Miko grievance*, July 25, 1984. Swan — 10 pages. (9)

#### Classification

Higher classification claimed — employer not making additional assignment to grievor; grievance dismissed. *Re The Great Atlantic & Pacific Company of Canada Ltd. & U.F.C.W., Locals 175 & 635; Racine grievance*, October 24, 1984. Majority: H.D. Brown, Baldwin; dissent: Walsh — 16 pages. (10)

Higher classification claimed — grievor not establishing that the bulk of his duties and responsibilities were within the higher classification; grievance dismissed. *Re Fanshawe College & O.P.S.E.U.; Coutu grievance*, October 15, 1984. Majority: H.D. Brown, Gray; dissent: Millard — 26 pages. (11)

Higher classification claimed — grievor to be paid at Tradesmen II rates; grievance allowed. *Re Detour Lake Mine & I.U.O.E.; Local 793; Bucar grievance*, November 16, 1984. Wilson — 22 pages. (12)†

Higher supervisory classification claimed — grievors not exercising sufficient responsibility; grievance allowed only in part. *Re Ontario Hydro & Ontario Hydro Employees' Union, Local 1000; grievance #NT-178*, November 6, 1984. Shime, Lewis, Abbott — 11 pages. (13)

Performance of duties of classification covered by another collective agreement — duties still within grievor's classification; grievance dismissed. *Re York, Local Board of Health of the City of & C.U.P.E.; Nagy grievance*, November 19, 1984. Kruger — 13 pages. (14)†

Temporary assignment to duties of higher classification — entitled to higher rate without service pay; compensation reduced because of grievor's delay. *Re Metropolitan Toronto Board of Commissioners of Police & Metropolitan Toronto Police Association; Death grievance*, November 15, 1984. M. Picher — 17 pages. (15)

#### Collection

Sick leave benefits and improper failure to schedule — grievance allowed. *Re Rockton Hotel & Hotel Employees & Restaurant Employees Local 75; Patterson grievance*, October 31, 1984. Boscarior — 4 pages. (16)†

Union dues — order for amount owing and interest. *Re Pine Tree Tavern & International Beverages Dispensers & Bartenders' Union, Local 280; union grievance*, November 2, 1984. Hearn — 4 pages. (17)†

#### Contracting Out

Estoppel not applicable — compensatory damages ordered. *Re Cumberland Clothing Ltd. & United Garment Workers, Local 253; group grievance*, November 14, 1984. Betcherman — 8 pages. (18)†

Janitorial work — no express restriction; grievance dismissed. *Re Kapuskasing, Corporation of the Town of, & C.U.P.E., Local 369; policy grievance*, November 26, 1984. Majority: Dunn, Ballantyne; dissent: Wood — 5 pages. (19)

Lift truck work at outside warehouse — peripheral work, insufficient control exercised; grievance dismissed. *Re Motor Wheel Corporation of Canada Ltd. & U.A.W., Local 127; contracting out grievance*, November 6, 1984. Brent — 8 pages. (20)

#### Discharge

Absence from work — culminating incident; grievance dismissed. *Re Ottawa General Hospital & C.U.P.E., Local 1657; Laframboise grievance*, November 12, 1984. Emrich, Stansel, Ballantyne — 17 pages. (21)

Absence without notice — grievor possessing record of considerable period of blamelessness; reinstatement without compensation. *Re P & H Foods Ltd., & U.F.C.W., Local 1105P; Haug grievance*, October 22, 1984. M. Picher, Sims, Beaulieu — 9 pages. (22)

Absenteeism — grievor capable of returning to work on a regular and consistent basis; conditional reinstatement without compensation. *Re Bell Canada & Communications Workers of Canada; Fox grievance*, November 19, 1984. M. Picher, Sinclair; addendum: Robbins — 19 pages. (23)

Abuse of patient — record not justifying reinstatement; grievance dismissed. *Re V.S. Services Ltd. & Workers' Union of Queen Elizabeth Hospital; Tyson grievance*, October 26, 1984. Burkett — 13 pages. (24)

Abuse of sick leave — grievor flying outside Canada when given 4 weeks bed rest for back strain; grievance dismissed. *Re University of Toronto & United Plant Guard Workers, Local 1962; Singh grievance*, November 23, 1984. Hinnegan — 11 pages. (25)

Accident involving company vehicle — resulting from lack of experience; reinstatement with compensation. *Re William Neilson Ltd. & U.F.C.W., Commisso grievance*, October 20, 1984. McCulloch — 5 pages. (26)

Alcoholism — impairment because of alcohol while on duty — grievance dismissed. *Re Eastern Provincial Airways Limited & C.A.L.E.A., Lauzier grievance*, November 15, 1984. M. Picher — 30 pages. (27)

Assault upon supervisor alleged — established on balance of probabilities; grievance dismissed. *Re GNB Batteries Ltd. & U.S.W.A., Local 5049; Matthews grievance*, November 20, 1984. Majority: H.D. Brown, McLaughlin; dissent: Wilton — 20 pages. (28)

Attempt to sabotage equipment alleged — insufficient facts and unsatisfactory evidence to make necessary credibility determination; grievance allowed. *Re 3M Canada Inc. & U.A.W.; Hord grievance*, November 7, 1984. McLaren — 10 pages. (29)†

Attitude toward customers — conduct not amounting to solicitation of gratuity; reinstatement without compensation. *Re Toronto Airport Hilton & Hotel Employees & Restaurant Employees, Local 75; Grougiannis grievance*, November 9, 1984. Adams, Brisbin, Tate — 14 pages. (30)

Culminating incident — improper consideration of suspension occurring outside two-year limitation period; substitution of written warning. *Re Carling O'Keefe Breweries of Canada Ltd. & United Brewery Workers, Local 325; Benson grievance*, November 19, 1984. Kruger — 15 pages. (31)

Deliberate tampering with company equipment alleged — company providing sufficient cause to discharge grievor; grievance dismissed. *Re Canada Packers Inc. & U.F.C.W., Local 114; Vella grievance*, November 1, 1984. Majority: McLaren, Williamson; dissent: Lewis — 44 pages. (32)

Failure to report defective machinery and lateness — grievor reporting defective heater, but consistently late — grievor not losing points for first offence — automatic dismissal nullified; grievance allowed. *Re Provost Cartage Inc. & E.C.W.U., Local 141; Chisholm grievance*, November 27, 1984. Hinnegan — 13 pages. (33)

Insubordination — culminating incident — progressive discipline applied; grievance dismissed. *Re CAE-Montupet Diecast Ltd. & I.A.M. Local Union No. 2719; Gutoskie grievance*, November 7, 1984. Barton — 8 pages. (34)†

Insubordination, refusal to report to work after leave of absence cancelled — discharge appropriate; grievance dismissed. *Re Hiram Walker & Sons Ltd. & U.A.W., Local 2027; Nelson grievance*, November 16, 1984. Hinnegan — 11 pages. (35)

Insubordination — verbal abuse of supervisors — grievor only prepared to admit part of her misconduct; discharge replaced by four weeks suspension. *Re Certified Brakes, a Division of Lear Siegler Industries Limited & U.S.W.A., Ranieri grievance*, November 16, 1984. Hinnegan — 13 pages. (36)

Long term disability — employer's decision premature; grievance allowed. *Re Queensway General Hospital & O.N.A.; Zwings grievance*; November 14, 1984. Majority: Swan, Ballantyne; dissent: MacDougall — 18 pages. (37)\*

Loss of seniority where lay-off period equal to length of continuous service at plant — service at other plant not relevant; estoppel not applicable; grievance dismissed. *Re MacMillan Bathurst & Canadian Paperworkers Union, Local 1199; Marks et al grievances*, November 20, 1984. O'Shea — 38 pages. (38)†

Probationary employee — employer entitled to consider disciplinary and non-disciplinary matters; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Local 1000; Martin grievance*, November 19, 1984. Majority: Dunn, Cancilla; dissent: McCullough — 17 pages. (39)

Procedure — grievor waived rights by refusal to have steward present — breach not established; grievance dismissed. *Re Reynolds Aluminum Company of Canada Ltd. & International Molders & Allied Workers, Local 28; Walsh grievance*, October 25, 1984. Brown — 19 pages. (40)

Quit alleged — employees resigning after consultation with union bound by resignation. *Re Canada Packers Inc. & U.F.C.W., Local 114-P; individual grievances*, November 26, 1984. Rayner; partial dissent: Williamson; partial dissent: Lewis — 16 pages. (41)

Section 61.5 of Canada Labour Code — unsatisfactory performance not proven — reinstatement not ordered because of employer attitude; grievor to be fully compensated for losses. *Re Radio IWC Ltd./operating as Q107-FM Radio & Ron Davidson*, November 8, 1984. E.B. Jolliffe — 43 pages. (42)

Sleeping on job — conduct deliberate; grievance dismissed. *Re Kenroc Tools Inc. & U.S.W.A., Local 8747; Gauthier and Corbin grievances*, November 16, 1984. Wilson — 11 pages. (43)†

Theft and slip in productivity — grievor having emotional problems — grievor making full restitution and taking steps toward rehabilitation, suspension substituted for discharge. *Re London, Corporation of the City of & C.U.P.E., Local Union No. 101; Underwood grievance*, November 27, 1984. Brent — 22 pages. (44)†

Theft of company property — a planned act — company showing just and reasonable cause for discharge; grievance dismissed. *Re Trailmobile Canada & U.A.W., Local 397; Dawdy grievance*, November 7, 1984. Black — 11 pages. (45)†

Theft of company property — disciplinary record poor; grievance dismissed. *Re Titan Proform Co. Ltd. & U.A.W. Local 124; Sabatin grievance*, November 9, 1984. Weatherill — 7 pages. (46)

Theft of company property — grievor not forthright with the company or during the hearing; grievance dismissed. *Re Courtesy Dodge Chrysler Ltd. & U.A.W. Local 195; Rindlisbacher grievance*, November 9, 1984. Samuels — 9 pages. (47)

Verbal abuse of fellow employee — poor past record — culminating incident; grievance dismissed. *Re University Hospital & London and District Service Workers, Local 220; Yeats grievance*, November 12, 1984. O'Shea — 23 pages. (48)†

Work performance — non-culpable, but no likelihood of improvement; grievance dismissed. *Re P.H.A. Industries Ltd. & Canadian Paperworkers, Local 1144; Regas grievance*, November 16, 1984. Thorne — 12 pages. (49)†



**Discipline**

Absence from work place — twenty-one day suspension not unreasonable in light of grievor's previous record; grievance dismissed. *Re Noranda Mines Ltd. (Geco Division) & Canadian Union of Base Metal Workers; Lapierre grievance*; November 16, 1984. Gorsky — 18 pages. (50)

Absenteeism — absence culpable; absenteeism policy requiring verbal reprimand; grievance allowed in part. *Re MacMillan Bathurst Inc. & I.W.A., Local 2-76; DeLellis grievance*, November 9, 1984. Foisy — 17 pages. (51)†

Absenteeism as the result of illness — suspensions were disciplinary rather than corrective — just cause not established; grievances allowed. *Re Lancia-Bravo Foods & U.F.C.W., Local P530-2, Nordin and Corria grievances*, November 22, 1984. O'Shea — 11 pages. (52)†

Defamatory statements against employer — untrue statements amounting to misconduct; penalties reduced. *Re Country Place Nursing Home Ltd. & C.U.P.E., Local 1854; Jakma, Patterson and Ferguson grievance*, November 12, 1984. Brunner — 38 pages. (53)†

Insubordination; refusal to accept work assignment — eight-day suspension not unreasonable; grievance dismissed. *Re Titan Proform Co. Ltd. & U.A.W., Local 124; Sabatin grievance* — see (46) *supra* (54)

Insubordination toward supervisor — verbal exchanges only; suspensions reduced. *Re Vitafoam Products Canada Limited & U.E., Local 518; McKoy and Burton grievances*, October 30, 1984. Houston — 11 pages. (55)†

Note to fellow employee — disruptive to production; seven-day suspension justified. *Re Harris Steel Group Inc. & International Association of Bridge, Structural & Ornamental Iron Workers, Shopmen's, Local Union No. 734; Curno grievance*, November 22, 1984. Hinnegan — 6 pages. (56)

Tampering with tachograph and incorrectly filling out time sheet — six-day suspension justified; grievance dismissed. *Re Walmer Transport Co. Ltd. & Teamsters Union, Local 879; Killard grievance*, November 12, 1984. Roberts — 12 pages. (57)†

Vehicle accident — grievor negligent; written warning reasonable; grievance dismissed. *Re Scarborough, Public Utilities Commission of the Borough of, & Utility Workers of Canada, Local 1; Meeks grievance*, November 9, 1984. Majority: Weatherill, Gray; dissent: Bern — 10 pages. (58)

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Absence while on workers' compensation — employee not on leave of absence; grievor eligible for holiday pay and vacation, but not sick leave credits. *Re St. Mary's of the Lake Hospital & St. Mary's of the Lake Employees' Association; Schauf grievance*, August 30, 1984. Majority: Willes, Weir; dissent: Cancilla — 26 pages. (59)

Full-time status claimed — grievor permitted to work on circumstances making her a full-time employee; grievance allowed. *Re General Hospital of Port Arthur & S.E.I.U., Local 268; Rozic grievance*, March 14, 1984. Swan — 30 pages. (60)

Part-time regular status claimed — grievor more than casual employee; grievance allowed. *Re Chatelaine Villa Nursing Home & C.U.P.E., Local 2369; Taraba grievance*, November 22, 1984. Barton — 10 pages. (61)†

**Evidence**

Discussions with grievor and union officials admissible except where relating to settlement of grievance. *Re Toronto, Corporation of the City of & Metropolitan Toronto Civic Employees' Union, Local 43; Del Grande grievance*, November 27, 1984. Dunn — 4 pages. (62)

**Grievance Procedure**

Grievance committee rejecting grievance — committee considering all relevant material; grievance not arbitrable. *Re Peel Board of Education & District 10, O.S.S.T.F.; Shallwani grievance*, September 29, 1984. Majority: H.D. Brown, Rogers, dissent: McNeil — 21 pages. (63)

Procedural defect alleged — employer's conduct constituting waiver; grievance arbitrable. *Re General Hospital of Port Arthur & S.E.I.U., Local 268; Rozic grievance* — see (60), *supra* (64)

Timeliness — limits mandatory; no authority to extend limits; grievance not arbitrable. *Re O. & K. Orenstein and Koppel Canada Limited & Local Lodge No. 1740 — I.A.M.; Samadi grievance*, October 29, 1984. O'Shea — 20 pages. (65)†

Timeliness — not sufficient grounds for extending time limits; grievance dismissed. *Re Duo-Matic Olsen Inc. & U.S.W.A., Local 8222; Barrette grievance*, November 27, 1984. Welling — 7 pages. (66)†

Timeliness — waiver of limits by employer; grievance arbitrable. *Re St. Mary's of the Lake Hospital & St. Mary's of the Lake Employees' Association; Schauf grievance* — see (59), *supra* (67)

**Health & Safety**

Procedure where refusal to perform unsafe work — requirement to investigate with member of safety committee; grievance allowed. *Re Camco Inc. & U.E., Local 550; Wedge grievance*, October 23, 1984. O'Shea — 12 pages. (68)\*

**Holidays**

Lieu days — policy changed unilaterally; grievance allowed. *Re Stanley Precision & U.S.W.A., Local 4444; policy grievance*, November 23, 1984. Hearn — 13 pages. (69)†

Lieu days — employer policy of not granting lieu days on weekends — policy inconsistent with requirement of "mutual agreement"; grievance allowed. *Re St. Raphael's Nursing Home (Kitchener) & London and District Service Workers, Local 220; Singh and Sugden grievances*, November 12, 1984. Baum — 7 pages. (70)†

Lieu day where holiday occurring during vacation period — guidelines for scheduling lieu days established. *Re Stanley Precision & U.S.W.A., Local 4444; policy grievance*, November 27, 1984. Black — 12 pages. (71)†

**Holiday Pay**

Holiday falling within vacation period — qualifying days not applicable; grievance allowed. *Re MacMillan Bathurst Inc. & Canadian Paperworkers, Local 1497; group grievance*, November 14, 1984. Majority: O'Shea, Paxton; dissent: Rogers — 19 pages. (72)

Qualifying period — "day" meaning working day & not calendar day; grievance dismissed. *Re Royal Ottawa Hospital & O.N.A.; Higgins grievance*, October 30, 1984. Majority: Brandt, Stansel; dissent: Symes — 12 pages. (73)

## Illness

Fitness to return to work — employer not investigating reports of grievor's doctors thoroughly enough; employer to obtain further assessment of grievor's condition. *Re Stelco, Hilton Works & U.S.W.A., Local 1005, Belliveau grievance*, November 5, 1984. Majority: McLaren, Marshall; dissent: Jarvis — 17 pages. (74)

Proof of illness — union not discharging onus; grievance dismissed. *Re Willson Nursing Home & London & District Service Workers' Union Local 220; MacDonald grievance*, November 23, 1984. Majority: Brandt, Addario; did not concur: Switzman — 14 pages. (75)

Return to work — employer having no reasonable basis to question grievor's medical certificate; grievance dismissed. *Re Multi Fittings Ltd. & International Molders & Allied Workers, Local 49; Prtenjaca grievance*, November 23, 1984. Hunter — 11 pages. (76)†

Suspension for medical reasons — company ought to have reinstated grievor upon receipt of letters from doctors indicating grievor's capabilities; grievance allowed in part. *Re Champlain Sept-Iles Express Interprovincial & Teamsters, Local 938; Gray grievance*, June 16, 1984. Adell, Coltrinari, del Junco — 17 pages. (77)

## Interest Arbitration

Interpretative ruling on wage schedule for part-time employees, vacations, shift premium, holiday pay, benefit allowance, job posting, and shift rotation — grievances allowed in part; interest appropriate where clear refusal to implement order of board. *Re St. Raphael's Nursing Home (Kitchener) & London and District Service Workers Union, Local 220; individual and policy grievances*, February 29, 1984. Majority: Swan, Switzman; partial dissent: Graham; addendum: Switzman — 29 pages. (78)

## Job Evaluation

Automotive Mechanic — position evaluated. *Re Toronto, Corporation of the City of & C.U.P.E., Local 43; classification grievance*, October 10, 1984. E.B. Jolliffe, Milks, Tate — 127 pages. (79)

Standard of arbitral review — no particular deference to management's decision; overall point score insufficient to raise job to next wage group. *Re Toronto Transit Commission & A.T.U., Local 13; job evaluation grievance*, November 12, 1984. Swan — 30 pages. (80)

## Job Vacancy

Existence of vacancy — boiler room function constituting separate job; grievance allowed. *Re MacMillan Bathurst Inc. & I.W.A.; Local 2-76; Strickland grievance*, November 16, 1984. Solomatenko — 14 pages. (81)†

Existence of vacancy — vacancy created even though reduction of similar work in another department; grievance allowed. *Re Rothmans of Pall Mall Canada Ltd. & Bakery, Confectionery and Tobacco Workers, Local 319T; Budge grievance*, October 12, 1984. Adams — 21 pages. (82)

Existence of temporary vacancy — sufficient manpower existing within the classification to perform available work; no temporary vacancy; grievance dismissed. *Re Monarch Fine Foods Company Ltd. & Milk and Bread Drivers, Local Union No. 647; Reid grievance*, November 14, 1984. Majority: Brent, Weir; dissent: McRae — 9 pages. (83)

## Lay-Off

Bumping rights within "work group" — grievor within "work group" and qualified; grievance allowed. *Re Canadian General Electric Co. Ltd. & U.E., Local 524; O'Brien grievance*, November 12, 1984. Emrich — 22 pages. (84)†

Change from winter to summer schedule — not a lay-off; grievance dismissed. *Re Thunder Bay, Corporation of the City of & C.U.P.E., Local 87; union grievance*, August 13, 1984. Majority: Duchesneau-McLachlan, Holt; did not concur: Deveau — 13 pages. (85)

Discontinuance of job classification — proper lay-off; grievance dismissed. *Re Ray-Gordon Equipment Ltd. & I.U.O.E., Local 793; Kostos grievance*, November 9, 1984. Foisy — 9 pages. (86)†

Qualifications — job available during shutdown period — grievor possessing required skills; grievance allowed. *Re Ex-Cell-O Corporation of Canada Limited & International Molders & Allied Workers, Local 49; Smith grievance*, November 7, 1984. Brown — 17 pages. (87)

Qualifications — relative equality not established; grievance dismissed. *Re Heckett (Division of Harsco Corporation) & U.S.W.A., Local 7577; Simpson grievance*, November 9, 1984. M. G. Picher — 8 pages. (88)

Seniority not followed — employer not establishing justification for exemption; grievance allowed. *Re Inco Ltd. & U.S.W.A.; Chartrand grievance*, November 26, 1984. Majority: H.D. Brown Signoretti, dissent: Belton — 16 pages. (89)

Temporary reduction of hours for all employees within the grievor's seniority group alleged by company — reduction not applied to all employees in an equal fashion — lay-off and not a temporary reduction; grievance allowed. *Re Thames Valley Beverages Limited (London) & United Brewery Workers; Collinson grievance*, October 27, 1984. Rayner — 10 pages. (90)

## Leave of Absence

Educational leave — refusal unreasonable in circumstances; grievance allowed. *Re Metropolitan Toronto Assoc. for the Mentally Retarded & C.U.P.E., Local 2191; Brown grievance*, November 8, 1984. Weatherill — 13 pages. (91)†

Personal leave of absence for eight-month employment elsewhere requested — employer not unreasonable in refusing request; grievance dismissed. *Re Kingston General Hospital & ONA, Local 99; Lazurko grievance*, November 6, 1984. Pyle — 18 pages. (92)†

## Management Rights

No-beard rule — safety risk; rule reasonable even though not in force in employer's other plants; grievance dismissed. *Re Kellogg Salada Canada Inc., London Plant & American Federation of Grain Millers, Local 154; group grievance*, November 12, 1984. Brandt, Billings, Murray — 12 pages (93)\*

Requirement to supply odometer readings on a continuous basis for purposes of reimbursement — not an invasion of privacy — employer acting reasonably and within its rights; grievance dismissed. *Re North York, Corporation of the City of & C.U.P.E., Local 94, Wenzel grievance*, November 7, 1984. Solomatenko — 15 pages. (94)\*†



**Moving Expenses**

Storage charges — "transportation" including reasonable storage charges; grievance allowed. *Re O.P.S.E.U. & Ontario Public Service Staff Union; Campbell grievance*, July 19, 1984. Swan — 11 pages. (95)

**Overtime**

Additional work performed voluntarily — not constituting overtime; grievance dismissed. *Re General Bakeries Ltd. & R.W.D.S.U., Local 461; policy grievance*, September 26, 1984. Adams, Redford, Lewis — 11 pages. (96)

Authorization requirement — no implied authorization; grievance dismissed. *Re Trenton Memorial Hospital & O.N.A.; Dubreuil grievance*, November 22, 1984. Howe — 18 pages. (97)

Distribution — overtime distribution system binding employer, but particular assignment proper; grievance dismissed. *Re Gulf Canada Products Co. & E.C.W.U., Coates grievance*, November 13, 1984. Saltman — 15 pages. (98)

Distribution — overtime work improperly assigned to temporary worker; monetary compensation ordered; grievance allowed. *Re Molson's Brewery (Ontario) Limited & United Brewery Workers, Local 304; Walker grievance*, November 20, 1984. Rayner — 12 pages. (99)

Distribution — to be distributed equitably amongst employees normally performing work regardless of shifts; spread not inequitable; grievance dismissed. *Re Holland Hitch of Canada Ltd. & U.A.W., Local 636; South grievance*, November 23, 1984. Hinnegan — 8 pages. (100)

Highway drivers — provision claimed not applying to drivers; grievance dismissed. *Re Labatt's Ontario Breweries & Brewery Workers Union, Local 304; Watkins grievance*, November 13, 1984. Beck — 7 pages. (101)

Overhaul work — grievor not part of crew; no right to isolated days of overtime; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited & United Brewery Workers, Local 325; Green grievance*, November 5, 1984. Kennedy — 10 pages. (102)

Preshift overtime; junior employee called in — past practice supporting company's position; grievance dismissed. *Re Overland Western & Teamsters Union, Local 938; St. John & Comeau grievances*, June 19, 1984. Majority: Adams, Coltrinari; dissent: Petryshen — 12 pages. (103)

Remedy for improper assignment to casual employee — damages to be paid to union in trust for distribution to employees entitled to overtime. *Re O.P.S.E.U. & Ontario Public Service Staff Union, policy grievance*, July 25, 1984. Swan — 12 pages. (104)\*

Remedy for improper distribution — "in kind remedy" appropriate for Ridge grievance; Buckley grievance dismissed since particular entitlement not established. *Re Raybestos Canada Inc. & U.S.W.A., Local 5141; Ridge & Buckley grievances*, November 2, 1984. Thorne — 8 pages. (105)

**Overtime Pay**

Work-sharing agreement — union having agreed to work-sharing for a specified period; employer justified in its manner of payment; grievance dismissed. *Re DuPont Canada Inc., Maitland Works & E.C.W.U., Local 28; Williams grievance*, November 14, 1984. Majority: Brent, Binning; dissent: Nabi — 27 pages. (106)

**Premium Pay**

Pyramiding — express language preventing multiplier effect regardless of purpose for which premiums designed; grievance dismissed. *Re St. Thomas Elgin General Hospital & O.N.A.; Goodwin and Clutterbuck grievances*, October 29, 1984. Majority: Burkett, Wakely dissent: Mayne — 16 pages. (107)\*

Statutory holiday falling on Sunday — not entitled to both premiums; grievances dismissed. *Re Ault Dairies, Division of Ault Foods Ltd. & Milk and Bread Drivers, Local 647; Price, Thomas and Skarlatakis grievances*, November 28, 1984. Hunter — 9 pages. (108)

Time spent on call-outs — entitled to call-out premium, but not overtime premium; grievance dismissed. *Re Honeywell — Amplital Inc. & Communications Workers of Canada, Local 18; Visnovec grievance*, October 31, 1984. Majority: Kennedy, White; dissent: Switzman — 9 pages. (109)

Videotape Production Editor premium — company not providing enough evidence to explain withdrawal of premium payment; grievance allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T., grievance No. W-89*; October 31, 1984. P.C. Picher — 56 pages. (110)

**Probationary Employee**

Completion of probationary period — employer's action preventing completion of period; grievance allowed. *Re Sheridan College of Applied Arts & Technology, & O.P.S.E.U. Brackenridge grievance*. November 22, 1984. Brunner; partial dissent: Kaufman, dissent: Courtney — 36 pages. (111)

**Procedure**

Adjournment where grievor out of country — adjournment granted unconditionally. *Re Ottawa Civic Hospital & O.N.A., Local 90*, October 26, 1984. Pyle — 15 pages. (112)†

Adjournment while judicial review pending — delay prejudicial; adjournment denied. *Re London, Board of Education of the City of & London Women Teachers' Assoc., Ont. Public School Teachers' Federation, L'Association Des Enseignants Franco-Ontariens; policy grievance*, October 26, 1984. Burkett — 13 pages. (113)\*

Exclusion of press — hearings to be open to press and public. *Re Sheridan College of Applied Arts & Technology & O.P.S.E.U.; Brackenridge grievance*. See (111) *supra* (114) — see (111) *supra*. (114)

**Promotion**

Qualifications — competitive provisions; grievor possessing less experience; grievance dismissed. *Re ITT Aimco Division, Mississauga Operations & U.S.W.A., Local 7574; Esteves grievance*, October 29, 1984. Teplitsky — 3 pages. (115)

Qualifications — employer failing to interview grievor for second job vacancy; employer directed to consider qualifications of grievor. *Re Kingston General Hospital & O.N.A., Vancest grievance*; October 25, 1984. Willes — 12 pages. (116)†

Qualifications — employer giving proper consideration to qualifications and experience of grievor; grievor not possessing necessary qualifications or experience; grievance dismissed. *Re Sault College of Applied Arts & Technology & O.P.S.E.U.; Kennedy grievance*, October 31, 1984. Majority: Brunner, Courtney; dissent: Ziemba — 11 pages. (117)

Qualifications — grievor not possessing recent previous experience within the emergency department and therefore not considered "qualified"; grievance dismissed. *Re Sudbury Memorial Hospital & O.N.A.; Perusini grievance*, November 8, 1984. Houston — 11 pages. (118)†

Qualifications — grievor possessing technical expertise, but unreliable to perform duties on a regular basis; grievance dismissed. *Re St. Catharines General Hospital & O.N.A.; Facchin grievance*, October 30, 1984. Majority: Dunn, Storie; dissent: McIntyre — 8 pages. (119)

Qualifications — grievor not possessing required experience; grievance dismissed. *Re Byron Jackson Division, Borg Warner (Canada) Limited & I.A.M., Local 235; Roscia grievance*, November 26, 1984. Burkett — 15 pages. (120)

Qualifications — reasonable decision based on job-relevant criteria; grievance dismissed. *Re Protective Plastics Ltd. & U.A.W., Local 1620; Huntley grievance*, November 12, 1984. Gandz — 9 pages. (121)†

Qualifications — relative equality not established; grievance dismissed. *Re Beacon Hill Lodges of Canada Ltd. & S.E.U., Local 532; Lobsinger grievance*, November 21, 1984. Brent — 14 pages. (122)

Qualifications — selection process not made according to Collective Agreement; employer to reassess qualifications of both applicants. *Re Camco Inc. & U.E., Local 550; Chase grievance*, November 14, 1984. Brunner — 10 pages. (123)

Trial period denied — grievor's experience not justifying trial period; grievance dismissed. *Re Kelsey-Hayes Canada Ltd. & U.A.W., Local 636; Harrington grievance*, October 4, 1984. Roberts — 8 pages. (124)

#### Recall

Improper recall — grievor not pressing matter; compensation reduced accordingly. *Re Alumniprime Division of Indal Ltd. & U.S.W.A., Local 2729; individual grievance*, November 20, 1984. Schiff — 5 pages. (125)

Qualifications — grievor not establishing prima facie case that skill and ability relatively equal; grievance dismissed. *Re General Bakeries Ltd. & Bakery, Confectionery & Tobacco Workers', Local 264; Calhoun grievance*, November 15, 1984. Beck — 9 pages. (126)

Qualifications — grievors not possessing skills of workers hired during lay-off period; grievance dismissed. *Re Ram Partitions of Indal Ltd. & U.S.W.A., Local 2729; Douglas & Satteri grievance*, October 31, 1984. Kates — 9 pages. (127)

Rehiring of terminated employees — job posting procedure applicable; grievor not automatically entitled to former job; grievance dismissed. *Re DuPont Canada Inc. & Nipissing Independent Union; Rich grievance*, September 28, 1984. Majority: Swan, Binning; dissent: Marszewski. — 10 pages. (128)

Seniority not followed — damages appropriate remedy; grievance allowed. *Re Colonial Cookies, a Division of Beatrice International (Canada) Ltd., & U.F.C.W., Local 617P; Scott grievance*, November 19, 1984. Majority: Verity, Switzman; partial dissent: Smith — 9 pages. (129)

#### Redundancy

Availability of work — sufficient work not available; grievance dismissed. *Re Mono Lino Typesetting Co. Ltd. (C.P.I.) & Toronto Typographical Union; Local 91; Terrenzio grievance*, March 5, 1984. Majority: Swan, Reeve; dissent: Buhler — 17 pages. (130)

Redundant probationary employee entitled to priority over new hire — grievance allowed. *Re Ottawa Roman Catholic Separate School Board & O.E.C.T.A.; Burchill grievance*, November, 1984. D.W. Scott, Power; addendum: Laishley — 7 pages. (131)

Seniority governing factor — employer not establishing that needs of system justifying exception; grievances allowed. *Re Le Conseil des écoles séparées Catholiques d'Ottawa & L'Association des enseignants Franco-Ontariens, Unité régionale d'Ottawa; Chabot and Soucy grievances*, July 10, 1984. Majority: Roach, Grenville-Wood; dissent: Sigouin — 15 pages. English translation not available. (132)

#### Reporting Pay

Power failure — beyond company control; company acting reasonably; grievance dismissed. *Re Sherman Mine Cliffs of Canada Ltd. & U.S.W.A., Local 6896; policy grievance*, November 20, 1984. Brown — 20 pages. (133)

#### Scheduling of Work

Equalization of shifts — no meaningful relief available even if violation. *Re De Havilland Aircraft of Canada Ltd. & U.A.W., Local 112; Singh grievance*, November 3, 1984. Dunn — 3 pages. (134)†

#### Seniority

Recall — departmental seniority governing recall; grievances allowed. *Re Dashwood Industries Ltd. & United Brotherhood of Carpenters & Joiners of America, Local 3054; Westlake and Neevel grievances*, October 10, 1984. Majority: Rayner, Manson; dissent: Parsons — 10 pages. (135)

#### Sick Leave

Entitlement where pregnancy — pre-existing high blood pressure not arising out of pregnancy; acceleration of pregnancy leave improper; grievance allowed. *Re Metropolitan Separate School Board & O.E.C.T.A. & L.A.D.E.F.-O.; Quick grievance*, November 15, 1984. Majority: Adams, Green; dissent: Filion — 23 pages. (136)\*

#### Sick Pay

Calculation of waiting period — calendar days to be used; grievance allowed. *Re North American Steel Equipment Co., & U.S.W.A., Local 6662; Jamieson grievance*, November 15, 1984. Houston — 9 pages. (137)†

Entitlement where ship laid-up — no entitlement; grievance dismissed. *Re Upper Lakes Shipping Ltd. & Canadian Maritime Union Local 401, C.B.R.T.; Dodd grievance*, October 16, 1984. H.D. Brown — 14 pages. (138)

Entitlement where workers compensation benefits — entitled to difference between benefits & gross pay rather than net pay; grievance allowed. *Re Chedoke-McMaster Hospitals & C.U.P.E., Local 839; policy grievance*, November 12, 1984. Solomatenko — 9 pages. (139)†

#### Strike

Recall after strike — laid-off employees having no right to displace work force used during strike; grievance dismissed. *Re John T. Hepburn Ltd. & U.S.W.A., Local 3335; union grievance*, November 2, 1984. Beck, Noonan, Falkowski — 19 pages. (140)



### Travel Expenses

Entitlement — transportation benefit applying only to crews in ocean service; grievance dismissed. *Re Upper Lakes Shipping Ltd. & Canadian Maritime Union, Local 401, C.B.R.T.; coastal ships grievance*, October 16, 1984. H.D. Brown — 14 pages. (141)

### Union Officials

Plant chairman to be paid for administering collective agreement — pursuance of employee claim against employer in Small Claims Court not within scope of provision; grievance dismissed. *Re De Havilland Aircraft of Canada Ltd. & U.A.W.; Local 112; Spalding grievance*, November 3, 1984. Dunn — 6 pages. (142)†

### Vacations

Extent of entitlement — entitlement as of previous calendar year determinative; grievance dismissed. *Re Union Electric Supply Co. Ltd.; Goodwill Electric Supplies Ltd. & International Molders & Allied Workers, Local 28; Ramcharan grievance*, October 31, 1984. Teplitsky — 5 pages. (143)

Maternity leave — pro-rating appropriate; grievance dismissed. *Re Toronto Institute of Medical Technology Inc. & O.P.S.E.U., Local 572; McKerna grievance*, November 5, 1984. Majority: Adams, Mustard; dissent: Kaufman — 18 pages. (144)

Scheduling — employer exercising discretion reasonably; grievance dismissive. *Re Dominion Stores Ltd. & R.W.D.S.U., Local 414; Casey grievance*, November 2, 1984. Majority: Adams, Blair; dissent: McDonald — 9 pages. (145)

### Wages

Attendance bonus — applicable to school bus drivers, but not transit drivers; grievance dismissed. *Re Travelways School Transit Ltd. (Barrie/Orillia Division) & C.B.R.T.; policy grievance*, November 16, 1984. Solomatenko — 10 pages. (146)†

Effect of *Inflation Restraint Act* — not controlling rates which became effective after December 31, 1983; grievance allowed. *Re Hanover Board of Commissioners of Police of Town of & Hanover Police Assoc.; union grievance*, October 29, 1984. Burkett — 22 pages. (147)

Placement of part-time nurse on salary grid — not established that employer formula improper; grievance dismissed. *Re Halton Centennial Manor & O.N.A.; Palmer grievance*, November 26, 1984. Burkett, Billings, Ballantyne — 10 pages. (148)

Rates of pay for time spent on union business and holidays — to be paid for at base rate and not productivity rate; grievance dismissed. *Re Simmons Ltd. & U.E., Local 513; policy grievances*, October 31, 1984. Solomatenko — 15 pages. (149)†

Retroactive pay — notification of employees — lack of contact established in one case; grievance allowed in part. *Re Nel-Gor Castle Nursing Home & London & District Service Workers Union, Local 220; union policy grievances*, November 19, 1984. Majority: Knopf, Robbins; dissent: Futterer — 10 pages. (150)

Temporary postings — higher rate applicable; estoppel not applicable; grievance allowed. *Re Regional Municipality of Hamilton-Wentworth, & I.U.O.E., Local 772; policy grievance*, November 14, 1984. O'Shea — 19 pages. (151)

Time of payment — part of compensation plan and not binding because of *Inflation Restraint Act*; grievance dismissed. *Re St. Raphael's Nursing Homes Ltd. (Durham) & London and District Service Workers' Union, Local 220; policy grievance*, November 5, 1984. E.B. Jolliffe — 12 pages. (152)†

### Welfare Plans

Life insurance — amount payable to take into account retroactive wage increases. *Re Nepean, Corporation of the City of, & I.A.F.F. Nepean Professional Fire Fighters Association; retroactivity grievance*, November 6, 1984. Teplitsky — 3 pages. (153)

### Work Assignment

Application of pupil-teacher ratio — T.M.R. schools not to be excluded; grievance dismissed. *Re Niagara South Board of Education & Federation of Women Teachers' Associations of Ontario; Assoc. grievance*, November 13, 1984. Majority: Swan, Riddell; dissent: Sanders — 11 pages. (154)

Assignment to employees outside unit — not bargaining unit work; grievance dismissed. *Re E.S. Fox Ltd., Fabricating Division, & U.S.W.A., Local 8979; policy grievance*, November 6, 1984. Majority: Barton, Sergeant; dissent: Large — 9 pages. (155)

Change of job duties — oral representations not included in written agreement; grievance dismissed. *Re Air King Limited & I.A.M., Local 2243; union grievance*, November 8, 1984. Majority: Kennedy, Purdy; dissent: Carter — 11 pages. (156)

Inequitable work load alleged — external duties of a subjective nature and therefore not comparable; grievance dismissed. *Re Lambton College & O.P.S.E.U., Lawrence grievance*, October 12, 1984. Majority: H.D. Brown, Brady; dissent: Beaulieu — 25 pages. (157)

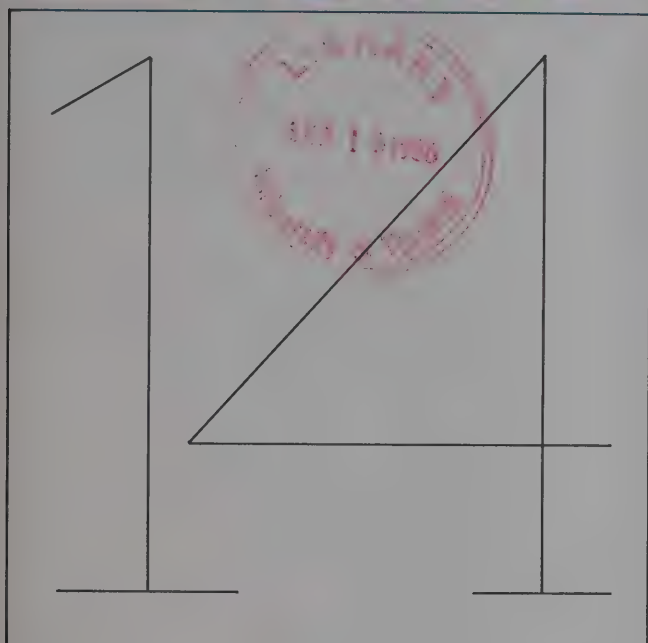
Part-time help — not established that full-time help displaced; grievances dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Local 414, Tessier, Labelle and Dumond grievances*, November 22, 1984. Majority: Hinnegan, Blair; dissent: Reekie — 12 pages. (158)

Separate lines of progression for each department — no right to schedule employee to another line of progression; grievance allowed. *Re MacMillan Bathurst Inc. & Canadian Paperworkers, Local 1497; group grievance*, November 12, 1984. Majority: O'Shea, Paxton; dissent: Rogers, addendum: O'Shea — 18 pages. (159)

Work-sharing — company and employees agreeing to work-sharing reorganization and suspension of job posting provisions of collective agreement; grievance dismissed. *Re Dupont Canada Inc. & E.C.W.U., Local 28; Bolduc grievance*, October 31, 1984. Majority: Swan, Binning; dissent: Nabi; addendum: Swan — 35 pages. (160)

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# Monthly Bulletin



Ontario Ministry of Labour



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Office of Arbitration as a service to  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of December, 1984. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Agreement to attempt to settle issue — not a final settlement; grievance arbitrable. *Re Nipigon — Red Rock Board of Education & S.E.I.U.*; *Robinson grievance*, December 4, 1984. Aggarwal — 28 pages. (1)†



**Bargaining Unit**

New position created by employer treated as being outside the Bargaining Unit — union failing to rectify situation which has continued for years; job of Activity Attendant declared to fall within the Bargaining Unit but no monies to be paid. *Re Timmins, Corporation of City of & C.U.P.E., Local 210; union grievance*, November 30, 1984. Majority: G.W. Dunn, DeGurse; dissent: Rukavina — 7 pages. (2)\*

**Classification**

Relief job classifications — practice not supporting payment at rate of position being filled; grievance dismissed. *Re Ault (Silverwood) Dairies Ltd. & Milk & Bread Drivers, Local 647; Sharpe grievance*, December 11, 1984. Gorsky — 17 pages. (3)†

**Collection**

Retroactive pay — direction to pay; interest not awarded. *Re Cumberland Clothing Ltd. & United Garment Workers, Local 253; union grievance*, December 19, 1984. Adamson — 10 pages. (4)†

Wages and union dues — parties directed to meet and reach agreement on amounts owing. *Re Alder Inn & Hotel and Restaurant Employees, Local 75; policy grievance*, December 19, 1984. Hearn — 4 pages. (5)†

**Collective Agreement**

Existence of agreement — memorandum constituting binding agreement despite absence of signatures and failure to include it in formal document executed later. *Re Mississauga Hydro Commission & I.B.E.W., Local 636; Winslow grievance*, November 16, 1984. Majority: P. Picher, Hayes; dissent: Hurd — 54 pages. (6)\*

**Contracting Out**

Outside agency supplying staff to do bargaining unit work — employer not exercising necessary degree of supervision for staff to be considered employees; grievance dismissed. *Re Nel-Gor Castle Nursing Home & London & District Service Workers Union, Local 220; policy grievance*, October 31, 1984. Kennedy, Winkler, Lewis — 23 pages. (7)

Private firm performing janitorial work in municipal building — use of building having changed during the time collective agreement in effect; with municipality still bound by Agreement; grievance allowed. *Re Timmins, Corporation of City of & C.U.P.E., Local 210; union grievance*, November 30, 1984. Majority: G.W. Dunn, DeGurse; dissent: Rukavina — 7 pages. (8)†

**Damages**

Calculation — determination of statutory deductions. *Re Kennedy Lodge Nursing Home & S.E.I.U., Local 204; Dennis and Quimado grievances*, December 21, 1984. Brandt, Graham, Solberg — 4 pages. (9)

Improper lay-off — calculation of compensation; interest not awarded because not claimed prior to hearing. *Re Hamilton Automatic Vending Co. Ltd. & United Cement, Lime, Gypsum and Allied Workers, Local 576; union grievance*, December 19, 1984. Majority: Devlin, Solberg; dissent: Dixon — 9 pages. (10)

**Demotion**

Lack of ability alleged — employer not meeting onus; grievance allowed. *Re Burnstein Castings Ltd. & U.S.W.A., Local 8900; Konig grievance*, December 19, 1984. Davis — 10 pages. (11)†

**Discharge**

Absenteeism — Attendance record poor with no basis to expect any improvement in the future; grievance dismissed. *Re Coca Cola Limited & Soft Drink Workers' Joint Local Executive Board; Bannister grievance*, December 13, 1984. M. Picher — 17 pages. (12)

Absenteeism with chronic back condition — no reason to conclude that problems to continue; conditional reinstatement. *Re Pakfold Business Forms and Printing Specialties & Paper Products Union, Local 688; Salfi grievances*, December 20, 1984. Majority: Kennedy, Solberg; dissent: Byers — 22 pages. (13)

Absenteeism with excessive and repetitive absenteeism caused by medical problems — no evidence as to possible reasonable attendance in the future; grievance dismissed. *Re The Scarborough Centenary Hospital Association & C.U.P.E., Local 1320; Ritchie grievance*, December 12, 1984. Hinnegan — 10 pages. (14)

Absenteeism for mental illness — prognosis for grievor's regular attendance in the future is good; conditional reinstatement. *Re Windsor Western Hospital Centre Inc. (IODE Unit) & S.E.U., Local 210; Pilaeis grievance*, December 10, 1984. Brandt, Bartlet, Solberg — 9 pages. (15)\*

Absenteeism — mental depression — grievor fit to return to work but not to former position; company not obligated to provide light duties for ill or injured workers; grievance dismissed. *Re Ascoelectric Ltd. & Communications Workers, Local 553; Pedley grievance*, December 7, 1984. Hearn — 15 pages. (16)\*

Assault upon fellow employee; threatening fellow employee with a knife — safety of fellow employees must be considered; grievance dismissed. *Re Canadian National Institute for the Blind & S.E.I.U., Local 204; Rider grievance*, December 19, 1984. P. Picher, Wilson, Lewis — 38 pages. (17)

Assault on foreman — record indicating probability of a recurrence; grievance dismissed. *Re Hendrickson Manufacturing (Canada) Ltd. & U.S.W.A., Local 8773; Petrie grievance*, December 19, 1984. Lerner — 13 pages. (18)†

Carelessness resulting in substantial financial loss — company partially to blame by offering grievor a run without benefit of statutory rest period; six month suspension substituted. *Re Taggart Services Limited & Progressive Motor Transport Employees' Association; Stratton grievance*, November 28, 1984. M. Picher — 19 pages. (19)

Consumption of alcohol when grievor should have been working — company discharging grievor without substantiating evidence, no good will shown; three week suspension substituted for discharge. *Re John Forsyth Company Limited & Amalgamated Clothing & Textile Workers, Local 3038; Reilly grievance*, December 11, 1984. Hearn — 7 pages. (20)†

Dishonesty; alleged falsified disability claim — falsification not proven — grievor failing to deal in a forthright manner; reinstatement without compensation. *Re Goodyear Canada Inc. & United Rubber Workers, Local 232; Baverstock grievance*, December 18, 1984. Saltman — 21 pages. (21)

Dishonesty; grievor engaging in other employment while receiving medical disability compensation — poor work record; grievance dismissed. *Re Northern Telecom Canada Limited & U.A.W. Local 1915; Powell grievance*, December 12, 1984. Willes — 22 pages. (22)

Drug trafficking on hospital premises — continuous and active intention to sell prohibited narcotics established — grievors not long-standing employees; grievance dismissed. *Re Scarborough General Hospital & C.U.P.E., Local 1487; Smith et al grievance*, December 7, 1984. M. Picher, Healy, Lewis — 21 pages. (23)

Failure to meet attendance condition of reinstatement — grievor's absences more than the number of average annual absences; grievance dismissed. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees, Local 43; Zimmerman grievance*, December 27, 1984. Majority: Brent, Milks; dissent: Tate — 20 pages. (24)

Failure to return grievor to active employment following an unpaid leave of absence — grievor working for another company while on leave — assumption that employer had full knowledge of what grievor was doing; grievance allowed. *Re Norris Transport Limited & Teamsters, Local 879; Demers grievance*, December 3, 1984. Rose — 18 pages. (25)†

Fitness to return to work — employer failing to prove grievor unfit to return to work; grievance allowed. *Re Heckett, Division of Harsco Corporation & U.S.W.A., Local 7577; Sackville grievance*, December 13, 1984. Wilson — 8 pages. (26)†

Harassment and intimidation of fellow employees — irrelevant factors considered; damages but not reinstatement. *Re Burlington Carpet Mills Canada Ltd. & Labourers, Local 183; Singh grievance*, December 19, 1984. Samuels, Sargeant; addendum: Richmond — 35 pages. (27)

Improper possession of company property — failure to give a creditable explanation; grievance dismissed. *Re Kodak Canada Inc. & Employees' Association of Kodak Canada; Gauci grievance*, December 11, 1984. Satterfield — 16 pages. (28)

Insubordination — medical certificate indicating depression severe enough to preclude working submitted to Company, but disregarded; reinstatement with partial compensation. *Re Zynaize Company & U.F.C.W.U., Local 617P; Lucio grievance*, November 27, 1984. Majority: Jolliffe, Beaulieu; dissent: Dale — 50 pages. (29)

Insubordination: refused to work overtime — 30 day suspension substituted for discharge. *Re Ellenzweig Bakery Limited, Division of General Bakeries Limited & Retail, Wholesale, Bakery & Confectionery Workers' Union, Local 461; Solin grievance*, December 17, 1984. Majority: Brunner, Waters; dissent: Redford — 22 pages. (30)

Loss of seniority — not giving rise to automatic termination; reinstatement with compensation; compensation reduced because of delay in processing grievance. *Re Arrowhead Metals Ltd. & U.A.W., Local 399; Brown grievance*, December 20, 1984. Hinnegan — 9 pages. (31)\*

Sexual harassment of student alleged — conduct constituting sexual harassment; grievance dismissed. *Re Provincial Schools Authority & Federation of Provincial Schools Authority Teachers; Somerville grievance*, November 22, 1984. Majority: Burkett, Ubels; dissent: Knott — 28 pages. (32)

Theft from pay telephones — company policy clear; grievance dismissed. *Re Bell Canada & Canadian Telephone Employees' Association; Bedard grievance*, November 29, 1984. Kates — 11 pages. (33)

## Discipline

Abuse of sick leave alleged — grievor's claim of illness partly substantiated; grievance allowed in part. *Re Air Canada & C.A.L.F.A.; Barnes McIntyre grievance*, November 23, 1984. Saltman — 13 pages. (34)

Failure to report upon return from absence — offence of a relatively minor nature, no prior disciplinary record; written warning substituted for suspension. *Re Scarborough, Public Utilities Commission of the Borough of, & Utility Workers of Canada, Local 1; Julott grievance*, December 7, 1984. Howe, Bern, Gray — 13 pages. (35)

Insubordination alleged; absence from shift without permission — no reasonable excuse offered; grievance dismissed. *Re Queen Elizabeth Hospital & O.N.A.; individual grievance*, October 24, 1984. Majority: Betcherman, Bass; dissent: McIntyre — 10 pages. (36)

Insubordination: failure to follow order to return to work for afternoon shift — foreman failing to find a mutually agreeable time for lieu time — no prior record of insubordination; written warning substituted for suspension. *Re Collingwood Shipyards & U.S.W.A., Local 6320; White grievance*, December 4, 1984. Betcherman — 6 pages. (37)†

Insubordination: refusal to carry out supervisor's order — suspension for balance of shift justified; employer obligated to notify employee as to return to work; grievance allowed in part. *Re Laura Secord Limited & United Brewery Workers, Local 304; Nicholas grievance*, December 5, 1984. Majority: Gorsky, Tanner; dissent: White — 22 pages. (38)\*

Lateness — employer not consistent in applying new policy with regard to lateness; written warning substituted for suspension, no compensation. *Re Toronto, Corporation of the City of & C.U.P.E., Local 79; Burness grievance*, December 18, 1984. Brent — 15 pages. (39)

Lateness — one-day suspension not excessive; grievance dismissed. *Re Burmah-Castrol Canada Ltd. & E.C.W.U., Local 599; Charles grievance*, December 13, 1984. Majority: Weatherill, Corbett; dissent: Dawe — 8 pages. (40)

Medication error policy — automatic application of policy unreasonable; grievance allowed. *Re Ottawa Civic Hospital & O.N.A.; policy grievance*, December 3, 1984. Samuels, Ballantyne; addendum: Mustard — 23 pages. (41)

Refusal to work overtime — overtime compulsory; grievor not having a good reason for refusing — five day suspension reasonable; grievance dismissed. *Re Stedmans — Division of MacLeod Stedman Incorporated & R.W.D.S.U., Local 414; Kimber grievance*, November 26, 1984. Wilson — 12 pages. (42)†

Theft alleged — not established; indefinite suspension improper; reinstatement with full compensation. *Re Ramada Renaissance Hotel & Hotel and Restaurant Employees, Local 75; Marshall grievance*, December 20, 1984. Hearn — 14 pages. (43)†

Theft of company property alleged; indefinite suspension — employer acting with just cause; grievance dismissed. *Re Ramada Hotel Don Valley & Hotel and Restaurant Employees, Local 75; Guirguis grievance*, December 20, 1984. Wilson — 12 pages. (44)†

Unauthorized use of employer property for personal benefit — grievor's misconduct not sufficiently job related to warrant demotion; five-day suspension substituted for demotion, two-day suspension previously imposed upheld. *Re Toronto, Board of Education of the City of, & Local 134 (Plant Operations and Maintenance) C.U.P.E.; McPhee grievance*, November 29, 1984. Devlin — 16 pages. (45)†



Verbal abuse of fellow employee — suspension justified; grievance dismissed. *Re Wardair Canada Inc. & C.A.L.F.A.; Viero grievance*, December 5, 1984. Kennedy — 9 pages. (46)

Work performance — grievor performing unauthorized task — no prior written discipline; grievance allowed. *Re Ellenzweig Bakery Limited, Division of General Bakeries Limited & Retail, Wholesale, Bakery and Confectionery Workers, Local 461; Solin grievance*. See (30), *supra* (47)

Work performance — reworks rule unfair; grievance allowed. *Re Affiliated Medical Products Ltd. & Amalgamated Clothing Textile Workers; Moores and policy grievances*, November 29, 1984. Hearn — 16 pages. (48)†

#### Discrimination

Racially deprecating name used by a supervisor — violation of no discrimination clause; grievance allowed. *Re Canada Post Corporation & Canadian Union of Postal Workers; Perera grievance*, December 19, 1984. Burkett — 12 pages. (49)

#### Employment Status

Temporary personnel agency supplying services of grievor — not an employee during relevant period; grievance dismissed. *Re George Brown College of Applied Arts and Technology & O.P.S.E.U.; McLaughlin grievance*, December 7, 1984. Brunner, Gray, Taylor — 16 pages. (50)

#### Grievance Procedure

Employer policy subject of grievance — matter properly raised as policy grievance; not inarbitrable because no reference to specified sections of collective agreement; breach of statute only relevant as aid to interpretation of agreement. *Re Toronto Transit Commission & A.T.U., Local 113; policy grievance*, December 14, 1984. Majority: Hunter, Beaulieu; partial dissent: Ronson — 13 pages. (51)

Timeliness — union not breaching mandatory time limit where employer refusing to meet; grievance arbitrable. *Re Hudson Aviation Services & I.A.M., Local 2413; Travers grievance*, November 26, 1984. Burkett — 31 pages. (52)

Withdrawal of grievance by employee — union having no right to pursue matter further. *Re Chapleau Senior Services Inc. & C.U.P.E., Local 2341; Cloutier and policy grievance*, December 8, 1984. Majority: Dunn, DeGurse; partial dissent: Mills — 12 pages. (53)

#### Holidays

Part-time nurses — eleven paid holidays covered by compensation in lieu of fringe benefits. *Re Queen Elizabeth Hospital, Queensway General Hospital, Renfrew Victoria Hospital, Sudbury Memorial Hospital & O.N.A.; holiday pay grievance*, November 23, 1984. Majority: Beck, Winkler; dissent: Robbins — 17 pages. (54)

#### Hours of Work

Guarantee of forty hours per week — deduction where employee not available to be assigned work not previously scheduled. *Re Thunder Bay, Corporation of City of & A.T.U., Local 966; Sedor grievance*, December 17, 1984. Devlin — 10 pages. (55)

#### Job Evaluation

"Colour-Pac" Technician — premium payment justified; matter remitted to parties. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; grievance No. T-737*, December 18, 1984. P. Picher — 30 pages. (56)

On-site manager — classification too low; matter remitted to parties. *Re Ottawa, Corporation of City of & Ottawa-Carleton Public Employees, Local 503; union grievance*, December 17, 1984. Pyle — 28 pages. (57)†

#### Job Posting

Error made in posting — job posted as permanent vacancy rather than temporary — employer entitled to correct mistake after job awarded; grievance dismissed. *Re Stelco Inc., Lake Erie Works & U.S.W.A., Local 8782; individual grievance*, December 18, 1984. McLaren — 13 pages. (58)

Priority — employee on afternoon shift having no priority for day shift position; grievance dismissed. *Re Cable Tech Limited & I.B.E.W., Local 1590; Woods grievance*, December 17, 1984. P. Picher, Brady, Bell — 16 pages. (59)

#### Job Vacancy

Existence of temporary vacancy — work being performed; grievance allowed. *Re Eastern Ontario Health Unit & C.U.P.E., Local 1997; policy grievances*, October 26, 1984. Thorne — 14 pages. (60)†

Requirement to fill all vacancies — employer required to maintain previous complement of firefighters; grievance allowed. *Re Belleville, Corporation of City of & Belleville Professional Fire Fighters' Association; union grievance*, November 22, 1984. Teplitsky — 7 pages. (61)

Shift assignment — not amounting to job vacancy; grievance dismissed. *Re Sheridan Villa Home for the Aged & C.U.P.E., Local 2101; policy grievance*, October 29, 1984. Baum — 11 pages. (62)†

#### Lay-off

Bumping rights — only entitled to bump the least senior employee whose duties the grievor can perform; grievance dismissed. *Re Arnprior and District Memorial Hospital & C.U.P.E., Local 2198; union grievance*, December 10, 1984. Majority: Kates, Werry; did not concur: Head — 9 pages. (63)

Employees off work indefinitely for long period — constituting lay-off; insurance and welfare benefits to be continued for two months; grievance allowed. *Re General Coach, Division of Citair Inc. & United Brotherhood of Carpenters and Joiners, Local 3054; policy grievance*, December 11, 1984. Samuels — 11 pages. (64)†

Existence of lay-off — time off constituting vacation; grievor entitled to vacation pay. *Re Quaker Oats Co. of Canada Ltd. & U.F.C.W., Local 293-1; Brewster grievance*, November 28, 1984. Emrich — 23 pages. (65)†

Qualifications — grievor not possessing qualifications to entitle her to position occupied by junior employee; grievance dismissed. *Re Peace Bridge Area Association for the Mentally Retarded & C.U.P.E., Local 2276; Murrell grievance*, December 14, 1984. Betcherman — 6 pages. (66)†

#### Management Rights

Requirement that working conditions be continued; express bus service on Highway 401 introduced unilaterally by management — driving of buses on super highways not a "fixed" working condition; consent of union not required; grievance dismissed. *Re Toronto Transit Commission & A.T.U., Local 113; union grievance*, December 7, 1984. Majority: Gorsky, Ubels; dissent: Beaulieu; addendum: Gorsky — 22 pages. (67)

Search of employee's personal effects — employer failing to establish overriding business interest to justify forcible search without employee's consent; grievance allowed. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Local 2251; Spurr grievance*, December 7, 1984. Majority: Davis, Woodcock; dissent: Morley — 15 pages. (68)\*

#### Maternity Benefits

Suspension of maternity benefits — no evidence that benefits reinstated; grievance dismissed. *Re Ottawa-Carleton Children's Aid Society & O.P.S.E.U., Local 454; Morin grievance*, October 17, 1984. Majority: Verity, Contini; dissent: Kaufman — 25 pages. (69)

#### Overtime

Calculation — where grievor late for shift — overtime beginning at end of shift; grievance allowed. *Re Domglas Ltd. & United Glass & Ceramic Workers, Local 203; Warren grievance*, December 4, 1984. Kennedy — 8 pages (70)\*

Distribution — employer acting properly; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; McDonald and Finn grievances*, October 26, 1984. Kruger — 15 pages. (71)†

Distribution — not established that majority of work usually performed by grievor; grievance dismissed. *Re Rheem Canada Inc. & U.S.W.A., Local 6868; Taylor grievance*, December 13, 1984. Majority: Barton, Mitchell; dissent: Fuller — 7 pages. (72)

#### Overtime Pay

Work-sharing agreement — union estopped from claiming overtime pay; grievance dismissed. *Re Ralston Purina Canada Inc. & E.C.W.U., Local 41; Mathieson grievance*, December 20, 1984. Kennedy — 16 pages. (73)

#### Probationary Employees

Calculation of probationary period — working days need not be continuous and consecutive; grievances allowed. *Re G.H. Johnson's Furniture (Ottawa) Ltd. & Teamsters, Local 91; Dalton & Belford grievances*, December 12, 1984. Pyle — 17 pages. (74)†

#### Procedure

Adjournment requested where s. 45 referral — adequate notice; request denied. *Re Ottawa General Hospital & O.P.S.E.U., Local 422; individual grievance*, November 20, 1984. Pyle — 8 pages. (75)†

Non-suit requested — mover of non-suit to be put to election. *Re Toronto, Corporation of City of & C.U.P.E., Local 79; policy grievance*, December 3, 1984. Kates — 17 pages. (76)\*

Reconsideration of award: fraud and perjury allegedly committed by grievor at hearing at which company was ordered to reinstate him — employer failing to prove fraud or perjury committed by grievor; grievance dismissed. *Re Holiday Tavern & Bartenders and Beverage Dispensers of H.E.R.E., Local 280; O'Leary grievance*, December 6, 1984. Wilson — 15 pages. (77)†

#### Progression

Automatic progression — not inconsistent with Regulation 792 of Police Act; grievance allowed. *Re Vanier, Board of Commissioners of Police of City of, & Vanier Police Association; Lavigne grievance*, December 21, 1984. M. Picher — 45 pages. (78)

#### Promotion

Assessment of qualifications — improper consideration of experience gained while vacation replacement; grievance allowed and matter remitted to employer for reconsideration. *Re Consumers Glass Co. Ltd. & United Glass and Ceramic Workers, Local 269; Vanderheyden grievance*, December 11, 1984. Brunner — 13 pages. (79)

Position with better shift but less pay — not a promotion; grievance dismissed. *Re Thunder Bay, Corporation of City of, & A.T.U., Local 966; Halstead grievance*, December 17, 1984. Devlin — 8 pages. (80)

Qualifications — grievor's ability not established; grievance dismissed. *Re Canadian Cannery Ltd. & U.F.C.W., Local 403; Bonaccorso grievance*, December 6, 1984. Majority: Gorsky, Harris; dissent: Beaulieu; addendum: Gorsky — 15 pages. (81)

Qualifications — grievor not possessing level of qualification necessary for permanent appointment; grievance dismissed. *Re Canadian Broadcasting Corporation & Canadian Wire Service Guild, Local 213 of the Newspaper Guild; DesLauriers grievance*, December 17, 1984. M. Picher, Caron, Lewis — 17 pages. (82)

Qualifications — grievor not possessing qualifications — company free to choose applicant best suited for training in the position; grievance dismissed. *Re Northern Telecom Canada Limited & Communications Workers; Heintzberger grievance*, November 29, 1984. Beck — 20 pages. (83)\*

Qualifications — grievor not relatively equal to successful applicant; selection procedures properly followed; grievance dismissed. *Re Windsor, Corporation of City of, & C.U.P.E., Local 543; Basili grievance*, December 11, 1984. Barton — 9 pages. (84)†

Return of grievor to former position in hospital after orientation — grievor not meeting a number of standard performance requirements; performance standards set by governing body of nursing profession reasonable; grievance dismissed. *Re Belleville General Hospital & O.N.A.; Cross grievance*, November 22, 1984. Willes — 40 pages. (85)†

Temporary vacancy — company service governing; grievance allowed. *Re Stelco Inc. & U.S.W.A., Local 1005; Mulryan grievance*, November 29, 1984. Davis — 10 pages. (86)†

#### Recall

Failure to report for work alleged — grace period running from day specified in recall notice for reporting for work; grievance allowed. *Re Beaver Foods Ltd. & U.F.C.W., Local 409; Miller grievance*, December 10, 1984. Aggarwal — 34 pages. (87)†

#### Redundancy

Letter of understanding — not exempting employer from considering seniority; grievance allowed. *Re Eldorado Resources Ltd. & U.S.W.A., Local 13173; Denny grievance*, December 10, 1984. Brent — 10 pages. (88)

Reclassification of existing jobs without reduction of numbers — not constituting redundancy; grievance dismissed. *Re Ottawa Civic Hospital & C.U.P.E., Local 576; group grievance*, December 10, 1984. Majority: Swan, Lapointe; dissent: Switzman — 8 pages. (89)



### Retirement

Extensions granted at employer's discretion — onus on union to establish that refusal disciplinary; not established that employer refusal arbitrary, discriminatory, or in bad faith; grievance dismissed. *Re Strathmere Lodge (Corporation of the County of Middlesex) & London and District Service Workers Union, Local 220; Prangley grievance*, December 21, 1984. Hunter — 9 pages. (90)

Retirement policy — company to determine when employees will be permitted to work beyond 65; company policy not discriminatory; grievance dismissed. *Re Scherer-G.C. Limited & U.F.C.W., Local 175; Sweeney grievance*, December 19, 1984. Lerner — 9 pages. (91)†

### Scheduling of Work

Extended tours: meal periods to be adjusted accordingly — employer not making appropriate adjustment; grievance allowed in part. *Re Ottawa Civic Hospital & O.N.A.; group and policy grievance*, December 4, 1984. Majority: Swan, Robbins; dissent: Mustard — 14 pages. (92)

Part-time employees — senior employees having no priority for extra shifts until all part-time employees assigned 24 hours; grievance dismissed. *Re Loblaw's Ltd. & Retail, Commercial & Industrial Union, Local 206; policy grievance*, December 5, 1984. Majority: Brent, Sargeant; dissent: Rudrum — 17 pages. (93)

Increase in hours — union having right to be consulted; grievance allowed. *Re Chapleau Senior Services Inc. & C.U.P.E., Local 2341; Cloutier and policy grievance* — see (53), *supra* (94)

### Sick Leave

Illness contracted while grievor on vacation — no entitlement to short-term income protection resulting from illness while on vacation; grievance dismissed. *Re The Ontario Produce Company, The Oshawa Food Division of the Oshawa Group Limited & Teamsters, Local 419; Fourmoziz grievance*, December 21, 1984. Hearn — 8 pages. (95)†

Injury sustained while fighting in self defence — grievor medically certified as unfit to work — application for sick benefits not an abuse of the plan; grievance allowed. *Re The Great Atlantic and Pacific Company of Canada Ltd. & Bakery, Confectionery and Tobacco Workers, Local 264; Bell grievance*, December 10, 1984. Majority: Burkett, Zimmerman; dissent: Sanderson — 14 pages. (96)\*

### Sick Pay

No deduction from sick credits where employee completing more than half day — applicable where first part of day not worked because of illness; grievance allowed. *Re O.N.A. & O.N.A. Staff Union; Enman grievance*, November 29, 1984. Wilson — 10 pages. (97)†

Payout for vested sick days — entitlement to leadman rate; grievance allowed. *Re Mississauga Hydro Commission & I.B.E.W., Local 636; Winslow grievance*, see (6), *supra* (98)\*

Starting date for payment — first day of counting is first date that employee loses income from work; grievance allowed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; policy grievance*, December 20, 1984. Black — 9 pages. (99)†

### Transfer

Conflict of interest — transfer justified; seniority relevant only where vacancy; grievance dismissed. *Re Royal Canadian Mint & P.S.A.C.; Malik grievance*, December 3, 1984. Little, Saxe, Hewitt-White — 33 pages. (100)

Entitlement — grievor possessing seniority and therefore ought to have been given opportunity to express his preference; grievance allowed. *Re Loblaw's Limited & Retail, Commercial and Industrial Union, Local 206; Smith grievance*, November 15, 1984. Majority: Lerner, Rudrum; dissent: Sargeant — 11 pages. (101)

Change of work location — company commencing practice of giving separate notices; required to continue to do so; grievance allowed. *Re Bell Canada & Communications Workers; Cooley and McLeod grievances*, September 26, 1984. Teplitsky, Beaulieu, Filion — 4 pages. (102)

Temporary transfer — grievor not relieving employee in higher classification; higher rate not applicable; grievance dismissed. *Re Timmins, Corporation of City of & O.P.S.E.U., Local 649; Irwin grievance*, October 25, 1984. Duchesneau-McLachlan — 3 pages. (103)†

### Union Rights

Access to plant during vacation shutdown — plant chairman or designate entitled to access; union estopped from recovering compensation. *Re Fleet Industries, Division of Ronyx Corp. Ltd. & I.A.M., Frontier Lodge 171; policy grievance*, December 24, 1984. Dunn — 5 pages. (104)

Time off for servicing grievances — meeting with counsel constituting "servicing"; reasonable for one grievor to attend; one grievance allowed. *Re Hamilton-Wentworth Children's Aid Society & Professional Staff Association of the Children's Aid Society of Hamilton-Wentworth; Amos and Bortz grievances*, December 19, 1984. Foisy — 12 pages. (105)†

Union chairman and committee men entitled to be employed as long as work available — no entitlement to overtime where plant holiday or otherwise; grievance dismissed. *Re Titan Proform Co. Ltd. & U.A.W., Local 124; union grievance*, December 4, 1984. Brunner — 8 pages. (106)

Union officials on indefinite lay-off not entitled to process grievances; grievance dismissed. *Re Dresser Canada Inc., Industrial Products Division, Cambridge (Galt) Plant & U.S.W.A., Local 5475; union grievance*, December 31, 1984. Dunn — 5 pages. (107)

### Vacation Pay

Calculation — prior vacation pay not excluded from calculation; grievance allowed. *Re Lily Cups Inc. & Graphic Communications Union; policy grievance, Shortt and Gray grievances*, December 4, 1984. Shime, McDonald; addendum: Bernardo — 6 pages. (108)

Calculation — statutory vacation pay to be additional to contractual vacation pay; grievance allowed. *Re Hudson Sportswear Ltd. & United Garment Workers, Local 253; group grievance*, November 29, 1984. Betcherman — 6 pages. (109)†

Lay-off — no deduction permitted because of lay-off as a matter of construction; estoppel applicable; four of five grievances dismissed. *Re SKF Canada Ltd. & I.A.M., Local 901; Stuckless et al grievances*, October 23, 1984. Teplitsky — 11 pages. (110)\*

### Wages

Arbitration of rates under wage re-opener — 3 percent increase granted for 1984-1985. *Re Crest Hotel & Hotel Employees and Restaurant Employees, Local 75; policy grievance*, December 10, 1984. Wilson — 9 pages. (111)†

Effect of Inflation Restraint Act, 1982 — altering terms of collective agreement; increase to be calculated on basis of altered terms; grievance dismissed. *Re Carleton University & Carleton University Academic Staff Association; union grievance*, December 20, 1984. Teplitsky — 5 pages. (112)

Placement on wage grid; employer not crediting hours worked beyond two-year experience level — employer interpretation more reasonable; grievance dismissed. *Re The Citizen (Division of Southam Inc.) & Ottawa Newspaper Guild, Local 205; union grievance relating to rate of pay*, December 14, 1984. Emrich — 16 pages. (113)†

### Work Assignment

Bargaining Unit work transferred outside the unit — Dominion Dairies Bargaining Unit completely destroyed as a result; work must be returned to the unit; grievance allowed. *Re Ault Foods Limited (Dominion Dairies Limited) & Milk and Bread Drivers, Local 647; policy grievance*, December 21, 1984. Brandt — 31 pages. (114)†

Full-time and volunteer firefighters clarification of parties' understanding. *Re Welland, Corporation of City of & Welland Fire Fighters' Association, Local 481, International Association of Fire Fighters; Tonkers grievance*, December 6, 1984. Teplitsky — 5 pages. (115)

Work during vacation shutdown — no lay-off; not overtime work; seniority not applicable; grievance dismissed. *Re Canada Cup & E.C.W.U., Local 22; Montagiani grievance*, December 19, 1984. Black — 9 pages. (116)†

### Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the month of March, 1985.

#### Discharge

Refusal to assist others and poor attitude — progressive discipline applied; grievance dismissed. *Re Electrical Power Systems Construction Association & Ontario Hydro and Ontario Allied Construction Trades Council, Labourers' Int'l. Union, Local 597*; February 21, 1985. Freedman, Stamp, Wilson — 3 pages. (117)

#### Procedure

Failure to answer summons — witness required to offer explanation. *Re 411150 Ontario Ltd. (Etco Steel) & International Association of Bridge, Structural and Ornamental Ironworkers, Local 700*; February 11, 1985. Satterfield, Stamp, Kobryn — 3 pages. (118)

Notice to third party — notice appropriate even though only damages sought for improper denial of work. *Re Speed Drywal Ltd. & United Brotherhood of Carpenters and Joiners, Local 18*; February 21, 1985. Knopf, Burret, Collins — 3 pages. (119)

#### Related Businesses

Continuation of unionized business in different form — certification vote ordered. *Re Construction P.H. Grager Inc. & United Brotherhood of Carpenters and Joiners, Local 93*; February 28, 1985. Mitchnik, Ronson, Armstrong — 8 pages. (120)

Section 1(4) applicable on facts — employer bound by Carpenters' Provincial Agreement. *Re K. Blok-Andersen Ltd. and David Blok Andersen (c.o.b. Regal Homes) & United Brotherhood of Carpenters and Joiners, Local 1256*; February 20, 1985. Egan, Eayrs, Lenkinski — 3 pages. (121)

### Union Security

Hiring hall provision — employer only obligated to hire available union members before hiring non-union employees; grievance dismissed. *Re Bird Construction Ltd. and General Contractors' Division of Construction Association of Thunder Bay Inc. & Lumber and Sawmill Workers, Local 2693 of the United Brotherhood of Carpenters and Joiners*; February 28, 1985. MacDowell, Armstrong, Grant — 9 pages. (122)

### Work Assignment

Improper assignment to employees other than union members — damages of \$435,533 ordered. *Re Yellow Jacket Welding Co. Ltd. & United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 146*; February 6, 1985. Furness, Armstrong, Stamp — 5 pages. (123)

### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of March, 1985.

*Fairview Manor Nursing Home (Almonte) & C.U.P.E., Local 3022*; Majority: Swan, Switzman; addendum: Switzman; dissent: Kelley — 27 pages.

*Welland County General Hospital & S.E.I.U., Local 204*; Swan, Dixon, Solberg — 7 pages.

*Participating Hospitals & O.N.A., (Central Issues)*; V.E. Scott; partial dissent: Winkler; dissent: Mayne — 29 pages.

*Participating Hospitals & C.U.P.E., and its Participating Locals*; (Local Issues) including: *Chedoke-McMaster Hospitals & C.U.P.E., Local 839*; Kruger, Filion, Robbins — 3 pages.

*Joseph Brant Memorial Hospital & C.U.P.E., Local 1065*; Kruger, Filion, Robbins; addendum: Robbins — 12 pages.

*St. Joseph's Hospital, Guelph & C.U.P.E., Local 1033*; Kruger, Filion, Robbins — 3 pages.

*St. Joseph's Hospital, Peterborough & C.U.P.E., Local 243*; Kruger, Filion, Robbins — 6 pages.

*Ottawa Civic Hospital & C.U.P.E., Local 576*; Kruger, Filion, Robbins; addendum: Robbins — 13 pages.

*Queen Elizabeth Hospital, Toronto & C.U.P.E., Local 1156*; Kruger, Filion, Robbins — 14 pages.

*Strathroy Nursing Homes Ltd. & London and District Service Workers, Local 220*; Saltman; dissents: Crabtree, Robbins — 34 pages.

*Newmarket Extended Care and Convalescent Centre & C.U.P.E., Local 2040*; Majority: O'Shea, Hayter; dissent in part: Taylor — 15 pages.

*Peel Manor Home for the Aged (Regional Municipality of Peel) & C.U.P.E., Local 966*; Majority: Black, Maddison; dissent: Budd — 43 pages.

*Sheridan Villa Home for the Aged (Regional Municipality of Peel) & C.U.P.E., Local 2101*; Majority: Black, Maddison; dissent: Budd — 35 pages.



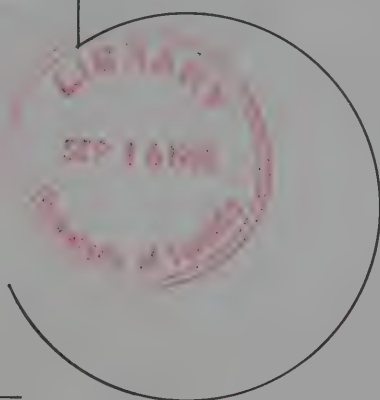


# Monthly Bulletin

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Ontario Ministry of Labour



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Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of January, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Parking & Traffic Regulations enforced by proceedings under municipal by-law — constituting "discipline"; grievance arbitrable. *Re Durham College of Applied Arts & Technology, Board of Governors & O.P.S.E.U.; Tredwell grievance*, January 2, 1985. Majority: Brunner, Robinson; dissent: Gray — 18 pages. (1)\*



### Bargaining Unit

Employees working outside Ontario — excluded except those included by express agreement. *Re The Globe & Mail & Southern Ontario Newspaper Guild, Local 87; union grievance*, September 6, 1984. Majority: Teplitsky, Ronson; dissent: Tate — 9 pages. (2)

Newly created position — by-law enforcement position appropriate for inclusion in bus operators bargaining unit; grievance allowed. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Local 279 & Independent Canadian Transit Union, Local 5; work assignment dispute*, January 28, 1985. Majority: Kates, Emond; dissent: Harnden — 31 pages. (3)

Scope of unit — determination as to inclusion of part-time employees and assistant managers; grievance allowed. *Re Hotel Selby & International Beverage Dispensers and Bartenders, Local 280; policy grievance*, January 7, 1985. Houston — 17 pages. (4)†

Wood Yard Foreman — substantially new and different job; not within bargaining unit; employees relieving in position included within bargaining unit. *Re MacMillan Bloedel Ltd. (Sturgeon Falls Division) & Canadian Paperworkers, Local 7135; wood handling foreman grievance*, January 8, 1985. Majority: Brent, Winkler; dissent: Paxton — 19 pages. (5)

### Board of Arbitration

Remedial jurisdiction — reservation of jurisdiction to compute compensation not including injunctive relief, not discretion to award interest. *Re Ontario Hydro & Ontario Hydro Employees, Local 1000; grievance no. NT-169*, December 13, 1984. Teplitsky, Abbott, Vincer — 6 pages. (6)

### Classification

Higher classification claimed — grievor not performing sufficient duties to be considered Support Services Officer 1; grievance dismissed. *Re Fanshawe College & O.P.S.E.U.; Cooper grievance*, January 2, 1985. Brent, Correll, McManus — 7 pages. (7)

Higher classification claimed — work of assisting bookkeeper not equivalent to performing bookkeeping job; grievance dismissed. *Re Dominion Stores Ltd. & Retail, Commercial and Industrial Union, Local 206; Roi grievance*, November 29, 1984. Majority: H.D. Brown, White; dissent: Rudrum — 22 pages. (8)

Overlap of duties — higher classification involving greater training, responsibility and mental effort; grievance dismissed. *Re Sheldons Engineering Ltd. & U.S.W.A., Local 2931; policy grievance*, January 28, 1985. Dunn — 9 pages. (9)†

### Collective Agreement

Retroactivity — provision abridging seniority not to be given retroactive effect; grievance allowed. *Re Leeds and Grenville County Board of Education & Leeds and Grenville F.W.T.A.O.; Goodfellow grievance*, January 25, 1985. Burkett — 30 pages. (10)

### Contracting Out

Watchman services — effective control over security service personnel retained by employer; grievance allowed. *Re Eddy Match Co. Ltd. & United Brotherhood of Carpenters and Joiners, Local 3175; policy grievance*, January 17, 1985. Kates — 19 pages. (11)

### Demotion

Inability to perform job alleged — collision with vehicle of fellow employee; employer having issued warnings over previous accidents — employer having established grievor incapable of performing job; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Germain grievance*, January 10, 1985. Lerner — 15 pages. (12)†

Security supervisor failing to report dishonest conduct of fellow employee — permanent demotion inappropriate; reinstatement without compensation. *Re Canada Post Corporation & P.S.A.C.; Raffai grievance*, January 21, 1985. Kates — 12 pages. (13)

### Discharge

Absenteeism — absences excessive, but not extreme; grievor proving he is probably able to come to work on a regular basis in the future; conditional reinstatement. *Re Firestone Canada Inc. & United Rubber Workers, Local 113; Marinucci grievance*, January 10, 1985. Barton — 12 pages. (14)†

Absenteeism — grievor incapable of regular attendance in foreseeable future; grievance dismissed. *Re Dominion Bridge Co. Ltd. & U.S.W.A., Local 3390; Willie grievance*, January 23, 1985. Adams — 13 pages. (15)

Absenteeism — recurring long-term illness; company undertaking to provide benefits for recurring long-term illness; grievance allowed. *Re Glidden Co., Division of S.C.M. (Canada) Ltd. & E.C.W.U., Local 23; Platten grievance*, January 25, 1985. Samuels — 8 pages. (16)

Absent without leave — grievor not under treatment by a physician — phone calls not considered to be treatment; grievance dismissed. *Re The Adams Mine, Cliffs of Canada Ltd. & U.S.W.A., Local 6409; Zwanko grievance*, December 18, 1984. Houston — 15 pages. (17)†

Automatic termination where lay-off extending beyond 12 consecutive working months — working months not including period of strike; grievance allowed. *Re Inter-City Truck Lines & Teamsters, Local 880; Van Bree grievance*, January 17, 1985. Majority: Burkett, Baillargeon; dissent: Fosbery — 23 pages. (18)

Breach of employee purchase policy — work record good; offence a momentary aberration; three-week suspension substituted for discharge. *Re Loblaw's Ltd. & U.F.C.W., Local 486; Stolpmann grievance*, January 17, 1985. Emrich — 30 pages. (19)†

Consumption of alcohol on company premises during lunch period — second offence — work record good otherwise; 20-day suspension substituted for discharge. *Re Leaf Confections Ltd. & Bakery, Confectionery and Tobacco Union, Local 264; Docherty grievance*, January 11, 1985. H.D. Brown — 20 pages. (20)

Culminating incident: failure to submit to search of handbag. Progressive discipline applied; grievance dismissed. *Re Ramada Renaissance Hotel & Hotel Employees Restaurant Employees Union, Local 75; James grievance*, January 15, 1985. Solomatenko — 14 pages. (21)†

Insubordination to supervisor — grievor partially provoked by supervisor — grievor's work record good; three-day suspension substituted for discharge. *Re Dominion Stores Ltd. & R.W.D.S.U., Local 414; Stragapete grievance*, January 2, 1985. Solomatenko — 29 pages. (22)†

Insubordination: refusal to perform job which had been assigned to him; failure to follow proper procedures with regard to vacation; verbal abuse of foreman — work record good; suspension & conditional reinstatement substituted for discharge. *Re G.S.W. Building Products Division (Hamilton) & U.S.W.A., Local 14092; Amos grievance*, January 14, 1985. E.B. Jolliffe — 22 pages. (23)†

Insubordination to foreman — short period of employment — grievor attempting to mislead arbitrator; grievance dismissed. *Re Victory Soya Mills, Division of Central Soya of Canada Ltd. & C.U.O.E., Local 101; Vamvouras grievance*, January 25, 1985. Black — 9 pages. (24)†

Insubordination — use of indecent language to supervisor — provoked by supervisor during personal conversation which was not work related; written warning and an apology to the supervisor substituted for discharge. *Re Ontario Humane Society & C.U.P.E., Local 87; McNally grievance*, December 28, 1984. Aggarwal — 33 pages. (25)†

Intoxication — unfit to work; two-month suspension substituted for discharge (Symonds); intoxication — unfit to work — insubordination — verbal abuse of supervisor; three-month suspension substituted for discharge (Pike). *Re Colonial Cookies, a Division of Beatrice International (Canada) Ltd. & U.F.C.W., Local 617P; Symonds and Pike grievances*, January 21, 1984. E.B. Jolliffe — 25 pages. (26)†

Marijuana used on company premises — eight years seniority; six-month suspension substituted. *Re Lake Ontario Steel Co. Ltd. & U.S.W.A., Local 6571; O'Neil grievance*, December 21, 1984. Thorne — 8 pages. (27)†

Neglect of duty — grievor abandoning elderly patient in whirlpool bath; work record good; reinstatement to a non-nursing position or resignation with damages. *Re Willson Nursing Home Ltd. & London and District Service Workers' Union, Local 220; Louwerier grievance*, December 31, 1984. M. Picher, Addario, Robbins — 8 pages. (28)

Provocation directed at supervisor — substitution of four-month suspension. *Re Vitafoam Products Canada Ltd. & U.E., Local 518; Burton grievance*, January 2, 1985. Wilson — 12 pages. (29)†

Refusal to perform work upon return from sick leave — refusal to work not supported by medical evidence; grievance dismissed. *Re Budd Canada Inc. & U.A.W., Local 1451; Cuetkovic grievance*, January 14, 1985. H.D. Brown — 27 pages. (30)

Refusal to return to work after being considered fit by Workers' Compensation Board — no entitlement to leave of absence; grievance dismissed. *Re Holland Hitch of Canada Ltd. & U.A.W., Local 636; Palenkas grievance*, December 18, 1984. E.B. Jolliffe — 12 pages. (31)†

## Discipline

Absenteeism — new company policy imposing rules different from those in the collective agreement; grievor absent because he was unwell — no just cause established; grievance allowed. *Re Gibson Electric Division, G.T.E. Sylvania of Canada Ltd. & U.A.W., Local 195; Bogden grievance*, January 8, 1984. Weatherill — 12 pages. (32)

Altercation with customer — provocation by the customer — work record good; written warning substituted for suspension. *Re Union Electric Supply Co. Limited & International Molders & Allied Workers; Klein grievance*, January 23, 1985. Teplitsky — 4 pages. (33)

Careless driving alleged — speed limit exceeded; 15-day suspension reasonable; grievance dismissed. *Re Gulf Canada Products Co. & E.C.W.U., Local 593; Kofoed grievance*, January 8, 1985. Kennedy — 13 pages. (34)

Deliberate damage to another employee's motor vehicle in company parking lot — company having the right and obligation to protect person and property of employees; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Kit grievance*, January 15, 1985. Majority: Kennedy, Kenny; dissent: Marshall — 9 pages. (35)\*

Destruction of company records by union official — written warning not excessive; grievance dismissed. *Re Kendall Canada & U.S.W.A., Local 8505; Gonsalves grievance*, December 7, 1984. O'Shea — 14 pages. (36)†

Discourtesy to passenger — grievor not acknowledging misconduct — no ground for mitigating penalty; grievance dismissed. *Re Wardair Canada (1975) Ltd. & C.A.L.F.A., individual grievance*, January 4, 1985. Majority: Knopf, Keenan; dissent: Kaufman — 23 pages. (37)

Failure to attend to job responsibilities alleged — established in part; grievances allowed only in part. *Re Quaker Oats Co. of Canada & U.F.C.W., Local 293-1; Fitzgerald et al grievances*, December 27, 1984. Willes — 15 pages. (38)†

Inattention to duties alleged — grievor not idling, but easily available for next assignment; grievance allowed. *Re Kelsey-Hayes Canada Ltd. & U.A.W., Local 195; Dmytrow grievance*, January 16, 1985. Samuels — 5 pages. (39)

Insubordination—abusive and threatening behaviour toward supervisor; five-day suspension reasonable; grievance dismissed. *Re Ford Glass Ltd. (Fabricated Products Ltd.) & Teamsters, Local 1985; Orlando grievance*, November 29, 1984. Majority: H.D. Brown, Healy; dissent: Phillips — 16 pages. (40)

Insubordination: failure to follow orders of group leader — group leader having authority to assign work — employer imposing progressive discipline; grievance dismissed. *Re El-Met-Parts & U.E., Local 520; Sagar grievance*, January 28, 1985. Rose — 9 pages. (41)†

Intoxication: grievor under the influence of alcohol while at work — work record good — employer moving beyond progressive discipline; grievor's suspension to be reduced to the same as other employee who committed same offence. *Re Dupont Canada Inc. & Kingston Independent Nylon Workers Union; Rushton grievance*, January 11, 1985. Burkett, Binning, Paliare — 18 pages. (42)

Insubordination: intemperate or foul language directed at foreman — constituting misconduct; three-day suspension reasonable; grievance dismissed. *Re Dominion Colour Co. Ltd. & Teamsters, Local 1880; Jackson grievance*, January 21, 1985. Majority: Brunner, Hall; dissent: Phillips — 10 pages. (43)

Request for morning teaching assignment rejected — not disciplinary; grievor's notification late; grievor entitled to declaration of such, but rest of grievance dismissed. *Re Associated Hebrew Schools of Toronto & The Association of General Studies Teachers in Hebrew Day Schools; Goodman grievance*, January 11, 1984. Saltman — 16 pages. (44)



Unauthorized release of employer's document to union — supervisor using services of grievor to prepare memorandum in question thereby creating impression of entitlement to use document for own purposes; five-day suspension reduced to one-day suspension. *Re Trenton Memorial Hospital & S.E.U., Local 663; Stewart grievance*, January 18, 1985. Willes — 7 pages. (45)†

Union official making false statements about employer — two-week suspension not unreasonable; grievance dismissed. *Re Amoco Fabrics Ltd. & Amalgamated Clothing and Textile Workers, Local 1606; Saunders grievance*, December 3, 1984. Majority: O'Shea, Wilkie; dissent: Webster — 17 pages. (46)\*

#### Employment Status

"Half-time employees" — half-time employees relieving full-time employees; not considered to be employed full-time on regular basis; grievance dismissed. *Re Metropolitan General Hospital & S.E.I.U., Local 210; Laporte and Meloche grievances*, January 21, 1985. Majority: Brandt, Kavanaugh; dissent: Solberg — 13 pages. (47)

Regular employee — no definite termination date; grievor regular employee; termination improper; grievance allowed. *Re General Hospital of Port Arthur & S.E.I.U., Local 268; Zirk grievance*, January 10, 1985. Wilson — 15 pages. (48)†

Re-hiring often loss of seniority resulting from lay-off — considered to be probationary employees; grievance not arbitrable if employer establishes that real reason for discharge a failure to meet work standard. *Re Exhibition Place & United Assoc. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 46; Taylor, Pitcher and policy grievances*, November 26, 1984. O'Shea — 20 pages. (49)†

#### Estoppel

Employees no longer allowed to stop work once production standard met — estoppel not applicable even if practice established; grievance dismissed. *Re Elan Tool and Die Ltd. & U.A.W., Local 127; union grievance*, January 21, 1985. Weatherill — 23 pages. (50)\*

#### Evidence

Onus where discharge of probationary employee — onus upon union to establish employer bad faith. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Nsiah-Yeboah grievance*, November 28, 1984. O'Shea — 14 pages. (51)\*†

#### Holiday Pay

Calculation — regular rate not including rotational amount for shift premiums; grievance allowed. *Re Advanced Extrusions Ltd. & Independent Canadian Steelworkers Union, Local 104; policy grievance*, January 23, 1985. Majority: MacDowell, Smeaton; dissent: Gilfillian — 15 pages. (52)

#### Job Posting

Permanent vacancy filled with temporary employee — posting requirement applicable; grievance allowed. *Re Toronto District Heating Corporation & I.U.O.E.; Peate grievance*, January 16, 1985. Burkett — 19 pages. (53)

Requirement to post "open jobs" — job referring to classification and not work location; grievance dismissed. *Re Soloray, Division of Sunbeam Corporation (Canada) Ltd. & Canadian Textile and Chemical Union; policy grievance*, January 22, 1985. Devlin — 19 pages. (54)†

#### Job Vacancy

Existence of vacancy — location of school not essential component of classification; employer able to transfer employee without posting. *Re Stormont Dundas and Glengarry County Board of Education & C.U.P.E., Local 782; policy grievance*, January 10, 1985. Foisy — 8 pages. (55)†

#### Hours of Work

Waiting time — issue to be governed by reasoning in previous award; grievance dismissed. *Re Overland Express & Teamsters, Local 938; Thurston, Lawless et al grievances*, January 25, 1985. Majority: Adams, Coltrinari; dissent: Petryshen — 9 pages. (56)

#### Interest Arbitration

Effect of provincial restraint guidelines and memorandum of settlement rejected by union members — determinative factors as case not made for catch-up. *Re Toronto Transit Commission & A.T.U., Local 113; C.U.P.E., Local 2; I.A.M., Lodge 235; January 22, 1985. Weiler — 29 pages. (57)\**

#### Lay-Off

Bumping rights — grievor only entitled to transfer to position of employer's choice; grievance dismissed. *Re Inco Ltd. & U.S.W.A., Local 6500; Salisbury grievance*, January 22, 1985. Majority: Weatherill, Ronson; did not concur: Hurst — 10 pages. (58)

Bumping rights — upward bumping inconsistent with promotion provisions; senior employees not entitled to "bump up". *Re Canadian Broadcasting Corporation & N.A.B.E.T., grievance N-154*, January 10, 1985. M. Picher — 29 pages. (59)\*

Casual employees — seniority not applicable; grievance dismissed. *Re Toronto, Corporation of City of & Metropolitan Toronto Civic Employees' Union, Local 43; individual grievances*, January 9, 1985. M. Picher, Milks, Lewis — 18 pages. (60)

Qualifications — health problems affecting grievor's performance; junior people retained better qualified; grievance dismissed. *Re Atomic Energy of Canada Ltd., Engineering Co. & P.S.A.C., Local 00358 National Component; Ruddell grievance*, January 2, 1985. Brent, Kitchen, Nabi — 8 pages. (61)

Qualifications; ten-day familiarization period — no entitlement to training period; grievance dismissed. *Re Falconbridge Ltd. & U.S.W.A., Local 6855; Hilderbrandt grievance*, January 24, 1985. Black — 14 pages. (62)†

Temporary employees hired while bargaining unit employees on lay-off — grievors reinstated with compensation. *Re F.W. Woolworth Co. Ltd. & R.W.D.S.U., Local 414; Lethbridge & Dingwall grievances*, December 31, 1984. McKechnie — 23 pages. (63)†

#### Leave of Absence

Compassionate leave to care for sick child requested — circumstances not of a serious or significant enough nature; grievance dismissed. *Re Consumers' Gas Company & E.C.W.U., Local 001; Diesberger grievance*, January 15, 1985. Majority: Kennedy, Healy; dissent: McDonald — 13 pages. (64)

Employer discretion — employer not entitled to limit its obligation to pay L.T.D. premiums when exercising discretion; estoppel not applicable, grievance allowed. *Re Hamilton-Wentworth Children's Aid Society & Professional*

*Staff Assoc. of the Children's Aid Society of Hamilton-Wentworth; Buker grievance*, January 11, 1985. Foisy — 24 pages. (65)\*†

### Management Rights

Actions of employer with regard to absence of grievor following an automobile accident — not harassment; grievance dismissed. *Re Scarborough Centenary Hospital Association & C.U.P.E., Local 1320; Narine-Singh grievance*, January 22, 1985. Brent — 6 pages. (66)

Dress code — management's right to implement code subject to "just cause" for discipline and prohibition against discrimination not pertinent to employment relationship. *Re McKellar General Hospital & O.N.A.; policy grievance*, January 2, 1985. Baum — 22 pages. (67)†

Rule relating to horseplay unilaterally imposed — valid exercise of management rights; discipline for violating rule subject to "just cause" provision. *Re Westinghouse Canada Inc. & U.E., Local 548; Noss grievance*, January 4, 1985. Baum — 8 pages. (68)†

### Maternity Leave

Scheduling — grievor required to commence leave early — employer not establishing inability to perform duties or risk to grievor and unborn child; grievance allowed. *Re Stratford General Hospital & O.N.A.; Semple grievance*, January 22, 1985. Majority: Saltman, McIntyre; dissent: Wakely — 14 pages. (69)

### Overtime

Entitlement — overtime distributed among those normally performing the work to be done without regard to classification — employee receiving overtime eligible; grievance dismissed. *Re Domglas Inc. & United Glass & Ceramic Workers, Local 260; Littlefield grievance*, January 16, 1985. Kennedy — 8 pages. (70)

Sick pay received for previous shift — hours of shift which could not be worked because of sickness not to be counted for calculation of overtime. *Re Sault Ste. Marie General Hospital & O.N.A.; Forbes grievance*, December 17, 1984. Aggarwal — 37 pages. (71)†

Time off to compensate for excessive hours worked — carry-over provision limiting both full days and part-days; grievance dismissed. *Re O.N.A., & O.N.A. Staff Union; Briggs grievance*, January 9, 1985. Majority: P. Picher, Caley; dissent: Steinberg — 15 pages. (72)

### Premium Pay

Call-in — entitled to premium even though absent from previous shift because of sickness; grievance allowed. *Re Sault Ste. Marie General Hospital & O.N.A.; Forbes grievance*. See (71), *supra*. (73)

Sunday work — employees not regularly on shift entitled to premium; grievance allowed. *Re Haun Drop Forge Co. Ltd. & U.A.W., Local 275; union grievance*, January 8, 1985. Weatherill — 6 pages. (74)

Work on scheduled day-off — entitled to premium even where called in because of unscheduled absence of another employee; grievance allowed. *Re Canada Safeway Ltd. & Retail Clerks, Local 409; McKinnon grievance*, December 14, 1984. Phillips — 4 pages. (75)†

### Procedure

Adjournment — terms reached by agreement of parties. *Re Toronto Hydro-Electric System & C.U.P.E., Local 1; Ulman grievance*, January 16, 1985. O'Shea — 3 pages. (76)†

### Promotion

Qualifications for full-time position — absenteeism and lateness relevant; grievance dismissed. *Re Women's Christian Assoc. of London (Parkwood Hospital) & London and District Service Workers Union, Local 220; Renaud grievance*, December 28, 1984. Roberts — 16 pages. (77)†

Qualifications — grievor not possessing equal skill, ability, experience and qualifications; grievance dismissed. *Re Victoria Hospital Corporation & O.N.A.; Iseger grievance*, January 25, 1985. Samuels — 10 pages. (78)†

Qualifications — grievor not possessing experience or aptitude to perform work; grievance dismissed. *Re Newcar Canada Ltd. & U.A.W., Local 195; Hartley grievance*, January 11, 1985. Samuels — 6 pages. (79)

Qualifications — grievor possessing equal qualifications and seniority; grievance allowed. *Re York University & York University Staff Assoc.; Stief grievance*, January 24, 1984. Egan — 8 pages. (80)†

Qualifications — grievor possessing more seniority, but lacking ability to cope in stressful job situation; grievance dismissed. *Re North York Board of Education & C.U.P.E., Local 1353; Canning grievance*, January 18, 1985. Egan — 6 pages. (81)†

Qualifications — grievor possessing required experience and qualifications within bargaining unit — successful candidate outside bargaining unit; grievance allowed. *Re Stratford Shakespearean Festival Foundation of Canada & London and District Service Workers Union, Local 220; Lang grievance*, January 4, 1985. Knopf, Waller, MacDonald — 9 pages. (82)

Qualifications: willingness to take course — relevant qualification; applied properly; grievance dismissed. *Re St. Raphael's Homes Ltd. & London and District Service Workers', Local 220; McCracken grievance*, January 16, 1985. Welling — 7 pages. (83)†

### Recall

Qualifications — grievor licensed to drive despite demerit points; grievance allowed. *Re 3-R Timber Inc. & Lumber and Sawmill Workers, Local 2995; Trudel grievance*, January 21, 1985. Barton, Papineau, Fyshe — 9 pages. (84)

Short period of work — estoppel not applicable; grievance allowed. *Re Haun Drop Forge Co. Ltd. & U.A.W.; individual grievance*, January 21, 1985. McCulloch — 4 pages. (85)

Temporary assignment — no vacancy on open job; grievance dismissed. *Re Westinghouse Canada Inc. & U.E.; Ford grievance*, January 25, 1985. Barton — 8 pages. (86)†

### Retirement

Change of retirement policy — not communicated to grievor; grievor entitled to one-year extension. *Re Kingston-Frontenac, Lennox and Addington Health Unit & O.N.A.; Drummond grievance*, January 3, 1985. Roach, Hendrick; did not concur: Switzman — 13 pages. (87)

### Scheduling of Work

Days off — seniority not applicable; grievance dismissed. *Re Holiday Inn Downtown & H.E.R.E., Local 75; Morales grievance*, January 22, 1985. Barrett — 8 pages. (88)†

### Seniority

Nature of seniority clause — senior employee must have qualifications to do work as well as less senior employee;



preliminary ruling. *Re Hamilton Civic Hospitals & C.U.P.E., Local 794; Herskovits grievance*, January 11, 1985. Solomatenko — 16 pages. (89)†

"Temporary" employees — not able to exercise seniority over permanently classified employees; grievance dismissed. *Re Photo Engravers and Electrotypers Ltd. & Toronto Printing Pressmen and Assistants No. 10 (Pressmen); Paddle grievance*, January 14, 1985. Majority: Swan, Filion; dissent: Lewis — 32 pages. (90)

#### Travel Allowance

Access to convenient public transportation — three-hour round trip not convenient; entitlement to living and transportation expenses. *Re Bell Canada & Communications Workers; Poirier et al grievances*, January 17, 1985. Majority: Burkett, Switzman; dissent: Filion — 14 pages. (91)

#### Uniforms

Entitlement where employees retiring during year — person must be employed at time uniform provided; grievance dismissed. *Re Stormont, Dundas and Glengarry County Board of Education & C.U.P.E., Local 782; Monch grievance*, January 11, 1985. Foisy — 5 pages. (92)†

#### Union Officials

Super-seniority — not to be exercised where regular seniority provisions sufficient to keep steward at work; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Dokman grievance*, January 15, 1985. Majority: Brandt, Kenny; dissent: Marshall — 14 pages. (93)\*

#### Union Rights

Access to plant — union's manager entitled to access and to speak to employees where no specific complaint; grievance allowed. *Re Lindzon Ltd. & International Ladies' Garment Workers' Union; policy grievance*, January 3, 1985. Schiff — 3 pages. (94)†

#### Vacation Pay

"Scheduled block credits" — referring to schedule which would have been worked; grievance dismissed. *Re Wardair Canada (1975) Ltd. & C.A.L.F.A.; Dukovich grievance*, January 10, 1985. P. Picher — 16 pages. (95)

#### Wages

Allowance for assessment resource counsellors — not to be reduced by allowance for specialist's certificate in special education; grievance allowed. *Re Wentworth County Board of Education & F.W.T.A.O. & O.P.S.T.F.; policy grievance*, January 25, 1985. Majority: Burkett, Sanders; dissent: Brown — 16 pages. (96)

Piece work rates — rates too low; matter to be resolved by appointment of independent time-study person. *Re Brown Shoe Co. of Canada Ltd. & U.F.C.W., Local 1979; MacCulloch and Lalonde grievances*, January 9, 1985. Pyle — 24 pages. (97)\*†

Responsibility allowance — grievances resolved through mediation/arbitration. *Re Participating Hospitals & O.N.A.; responsibility pay grievances*, October 31, 1984. Teplitsky, Paliare; did not concur: Winkler — 8 pages. (98)

Temporary assignment to low classification — entitled to wage rate for higher classification; grievance allowed. *Re Toronto District Heating Corporation & I.U.O.E.; Peate grievance*. See (53), *supra*. (99)

#### Welfare Plans

Dental plan covering "current O.D.A. rates" — referring to rates in effect at time of earlier interest arbitration award; grievance dismissed. *Re County Place Nursing Homes Ltd. & C.U.P.E., Local 1854; policy grievance*, January 28, 1985. Majority: Dunn, Addario; dissent: Jewett — 11 pages. (100)

Existence of equivalency provision — not established that equivalency provision continued in present collective agreement; grievance allowed. *Re Spartan Tool and Mould Ltd. & U.A.W., Local 195; policy grievance*, December 21, 1984. Gorsky — 14 pages. (101)

Long term disability plan — collective agreement only providing specified contract of insurance; grievance as to benefit level not arbitrable. *Re Algonquin College & O.P.S.E.U.; O'Farrell grievance*, January 3, 1985. Majority: Brent, Shields; dissent: Ziemba — 11 pages. (102)

Weekly indemnity insurance — policy not providing all benefits contemplated by collective agreement; grievance allowed. *Re MacMillan Bathurst Packaging Ltd. & Canadian Paperworkers, Local 1497; Chircop grievance*, January 24, 1985. Majority: Weatherill, Paxton; dissent: Rogers — 13 pages. (103)

#### Work Assignment

Elimination of classification and creation of new classification — within management rights; grievance dismissed. *Re Manville Canada Inc. & E.C.W.U., Local 26; Gage grievance*, January 24, 1985. Foisy — 12 pages. (104)†

Elimination of job classifications — employer having right to modify or eliminate classifications; grievance dismissed. *Re Manville Canada Inc. & E.C.W.U., Local 26; Gillard grievance*, January 22, 1985. Foisy — 12 pages. (105)†

Full-time position replaced by assigning work to two part-time employees — part-time employees not performing bargaining unit job; grievance dismissed. *Re Riverdale Hospital & C.U.P.E., Local 79; policy grievance*, January 23, 1985. Majority: Adams, Bertram; dissent: McDonald — 20 pages. (106)

Non-bargaining unit employee operating computer system installed for batching — not performing batching function to such an extent as to be considered a member of bargaining unit. *Re Canada Building Materials Co. & Teamsters, Local 230; policy grievance*, January 2, 1985. Majority: Samuels, Bartlet; dissent: Beaulieu — 9 pages. (107)

Notice to union of elimination of classification and creation of new classification — no obligation to give advance notice; grievance dismissed. *Re Manville Canada Inc. & E.C.W.U., Local 26; policy grievance*, January 16, 1985. Foisy — 7 pages. (108)†

Part-time employees assigned work before full-time employees — employer legitimately avoiding overtime pay; two grievances dismissed: grievor who was asked to be on call for the shift in question succeeds. *Re Timmins, Corporation of City of & C.U.P.E., Local 210; Chop, Anderson and Pretula grievances*, January 8, 1985. Betcherman — 5 pages. (109)

## Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the month of April, 1985.

### Board of Arbitration

Enforcement of own award — no jurisdiction; grievance dismissed. *Re Masonry Contractors' Association of Toronto Inc. & Skyline Construction Masonry Ltd. & Bricklayers, Masons, Independent Union of Canada, Local 1; employer grievance*, March 21, 1985. Knopf, Grant, Kobryn — 6 pages. (110)

### Collection

Wages, welfare and other payments; order to pay issued. *Re Wilson Excavating and Grading Ltd. & I.U.O.E., Local 793; union grievance*, April 1, 1985. Franks, Murray, Grasso — 2 pages. (111)

Welfare fund and other contributions not paid — order to pay issued. *Re Gillespie Restoration Painting Ltd. & Drywall, Acoustic Lathing and Insulation, Local 675 of the United Brotherhood of Carpenters & Joiners of America; union grievance*, March 25, 1985. Satterfield, Murray, Armstrong — 7 pages. (112)

Welfare fund and other contributions not paid — related employees bound by provincial agreement; order to pay issued. *Re Malermeister Painting Ltd. and Victor Zaunet c.o.b. as Certified Master Painting & International Brotherhood of Painters and Allied Traders, Local 1904; union grievance*, March 5, 1985. Betcherman, Wightman, Armstrong — 3 pages. (113)

### Contracting Out

Sub-contracting — hiring in violation of provincial agreements; grievance allowed. *Re Gilbert Construction (1981) Ltd. & Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen; union grievance*. March 22, 1985. Springate, Stamp, O'Flynn — 2 pages. (114)

### Hiring Hall

Non-union members hired in violation of provincial agreement — grievance allowed. *Re Marel Construction*

*Ltd. & United Brotherhood of Carpenters and Joiners, Local 18; union grievance*, March 21, 1985. Furness, Rogers, Ronson — 6 pages. (115)

## The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of April, 1985.

*Toronto East General and Orthopaedic Hospital & S.E.U., Local 204*. Majority: H.D. Brown, Solberg; addendum: Solberg; partial dissent: Mustard — 12 pages.

*Marshall Gowland Manor (Corporation of City of Sarnia) & London and District Service Workers, Local 220*. Second supplementary award; P. Picher, Drmaj, Lewis — 19 pages.

*Peterborough Civic Hospital & O.P.S.E.U., Local 345*. Pyle, Stephenson, Taylor — 13 pages.

*Mapleton Manor Nursing Home & H.O.P.E., Local 206*; interim award: Baum, Addario, Robbins — 9 pages.

*South Haven Nursing Home & C.U.P.E., Local 2225*. Majority: H.D. Brown, Switzman; addendum: Switzman; dissent: Ellis — 19 pages.

*Leamington District Memorial Hospital & S.E.U., Local 210*; McLaren; dissents in part: Burnell, Solberg — 26 pages.

*St. Thomas-Elgin General Hospital & London and District Service Workers, Local 220*; H.D. Brown; dissent: Filion; partial dissent: Lewis — 70 pages.

*Windsor Western Hospital Centre & O.P.S.E.U.* Majority: McLaren, Solberg; partial dissent: Bartlet — 24 pages.

*Versa Care Centre of Hanover & London and District Service Workers, Local 220*. Majority: Waisglass, McGarva; dissent: Switzman — 16 pages.

*Participating Hospitals & O.P.S.E.U. (Central Issues)*. Majority: O'Shea, Winkler; addendum: Winkler; partial dissent: Lewis — 37 pages.

*Participating Hospitals & O.N.A. and its Participating Locals (Local Issues)*. McKechnie; addendum and partial dissent: Wakely; addendum and partial dissent: McIntyre — 97 pages.

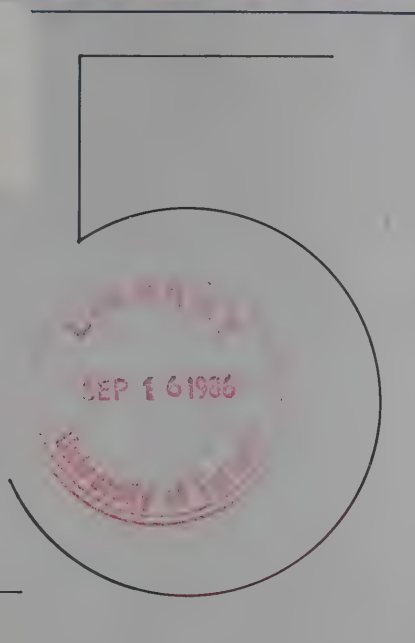




# Monthly Bulletin

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Ontario Ministry of Labour



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T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of February, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Casual employees regularly working hours in excess of threshold limit — brought within scope of collective agreement and considered to have worked probationary period. *Re Metropolitan General Hospital & S.E.I.U., Local 210; Lauth grievance*, February, 1985. Majority: McLaren, Solberg; dissent: Cavanaugh — 43 pages. (1)



Entitlement to long-term disability benefits under plan — employer only obligated to provide plan; grievance not arbitrable. *Re Mississauga, Corporation of City of, Transit Department & A.T.U., Local 1572; Smith grievance*, February 6, 1985. Devlin — 10 pages. (2)†

Facts parallel to those covered by board's award — not within scope of board's jurisdiction to complete award. *Re Metropolitan Toronto, Municipality of & Metropolitan Civic Employees' Union, Local 43; Webster et al grievances*, January 24, 1985. Majority: P. Picher, Beresford; dissent: Tate — 10 pages. (3)

Personal appearance rules established by by-law — jurisdiction to determine if by-law consistent with *Police Act*; no authority to determine if by-law inconsistent with *Canadian Charter of Rights and Freedoms*. *Re Waterloo Regional Board of Commissioners of Police & Waterloo Regional Police Association; Hopiavouri grievance*, February 18, 1985. MacDowell — 18 pages. (4)

Terms of settlement reinstating grievor — grievance arising from settlement arbitrable but no jurisdiction to amend penalty if terms of settlement breached. *Re Great Atlantic and Pacific Co. Ltd. & R.W.D.S.U., Local 414; Rutherford grievance*, January 14, 1985. Little, Dahmer, Dinsdale — 16 pages. (5)

#### **Bargaining Unit**

Administrative personnel treated for some purposes as though within unit — not engaged as teachers and not included in unit; grievance dismissed. *Re Centennial College & O.P.S.E.U., Banks et al grievances*, February 8, 1985. Majority: Weatherill, Gretton; dissent: Kaufman — 25 pages. (6)

Registered nurse employed as nursing attendant — not employed as registered nurse and within service workers unit; discharge improper; grievance allowed. *Re Sunnyside Home (Regional Municipality of Waterloo) & London and District Service Workers' Union, Local 220; Cathers grievance*, January 29, 1985. Majority: Brown, Solberg; dissent: Boehmer — 11 pages. (7)

Registered nurses performing work as R.N.A.s — not falling within O.N.A. bargaining unit; grievances dismissed. *Re Windsor Western Hospital Centre (I.O.D.E. Unit) & O.N.A.; Warner and union grievances*, February 18, 1985. Weatherill; partial dissent: Bartlet; dissent: Mayne — 22 pages. (8)\*

Resident care co-ordinator — employed in "nursing capacity" although not engaged in "front-line nursing"; position within bargaining unit despite supervisory responsibilities. *Re Bonnechere Manor & O.N.A.; union grievance*, February 12, 1985. Scott — 13 pages. (9)†

#### **Bereavement Leave**

Extent of entitlement — three-day entitlement qualified by condition that to be used for making required arrangements and attending funeral; grievance dismissed. *Re Peterborough, City of, Board of Commissioners of Police & Peterborough Police Association; Gasperi grievance*, January 24, 1985. Jackson — 11 pages. (10)

#### **Call-out Pay**

Entitlement — constituting minimum payment to apply regardless of actual time worked and regardless of whether time worked merges into employee's regular shift; grievances allowed. *Re Algoma Steel Corp. Ltd., Tube Division & U.S.W.A., Local 5595; Grema et al grievances*, February 22, 1985. Davis — 8 pages. (11)†

#### **Classification**

Dispatchers deemed to be Probationers when first hired — becoming Dispatchers once probationary period expired. *Re Welland, Corporation of City of & Welland Professional Fire Fighters' Association; Association grievance*, February 19, 1985. Kennedy — 15 pages. (12)

General Help classification — intention to create lower-rated classification with duties overlapping higher classification; grievance dismissed. *Re Krueger Air (Canada) Ltd. & Sheet Metal Workers, Local 540; McFarlane grievance*, January 28, 1985. O'Shea — 13 pages. (13)†

#### **Collective Agreement**

Effect of memorandum of settlement — merged into collective agreement; terms of collective agreement prevailing; grievance dismissed. *Re Venturetrans Manufacturing Inc. & U.A.W., Local 1837; policy grievance*, February 5, 1985. Weatherill — 12 pages. (14)\*

Letter of intent — not intended to be part of collective agreement; grievance dismissed. *Re All-Way Transportation Corp. & A.T.U., Local 113; safety and attendance bonus grievance*, February 11, 1985. Majority: Samuels, Billings; dissent: Beaulieu — 8 pages. (15)

#### **Contracting Out**

Buyer of company product performing work on company limits that would normally be done by bargaining unit employees — improper contracting-out; grievance allowed. *Re Abitibi-Price Inc. & Lumber and Sawmill Workers, Local 2995; union grievance*, January 30, 1985. Majority: Weatherill, Mior; dissent: Brady — 13 pages. (16)\*

External maintenance work — no express restriction on contracting out; grievance dismissed. *Re Windsor Transit & A.T.U., Local 616; union grievance*, February 15, 1985. E.B. Jolliffe — 13 pages. (17)

Trucking of company product — drivers employees of contractor; legitimate contracting-out; grievance dismissed. *Re Polysar Ltd., Resins Division & E.C.W.U., Local 803; grievance #84-4*, January 7, 1985. Roberts — 12 pages. (18)\*

#### **Damages**

Calculation where work injury while mitigating loss — employer to top up Workers' Compensation; damages also given for out-of-pocket expenses in mitigating loss; consideration also given to absenteeism and overtime opportunities. *Re Venco Metals Ltd. & U.S.W.A.; McAuliffe grievance*, February 25, 1985. Weatherill — 8 pages. (19)

#### **Demotion**

Inability to perform job — employer proving grievor not competent to perform work, having given him an 8 week trial period; grievance dismissed. *Re Les Aliments Dainty Foods Inc. & Brewery Workers, Local 278; Sache grievance*, February 6, 1985. Hinnegan — 10 pages. (20)†

Inability to perform job — non-disciplinary demotion reasonable response; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A.; Ryan grievance*, January 17, 1985. P. Picher — 33 pages. (21)

Work performance unsatisfactory; alcoholism — demotion justified despite evidence of rehabilitation; grievance dismissed. *Re Wyeth Ltd. & E.C.W.U., Local 368; Udall grievance*, February 25, 1985. Samuels — 5 pages. (22)

Work-related accidents involving lost-time injuries — not established that grievor accident-prone; reinstatement with compensation. *Re Windsor, Corporation of City of & Windsor Municipal Employees' Union, Local 82 & C.U.P.E.; Sanders grievance*, February 11, 1985. Weatherill; addendum: Brophy; dissent: Slopen — 24 pages. (23)\*

#### Discharge

Absence from work without permission — work record poor; culminating incident; reinstatement without compensation. *Re Air Canada & I.A.M.; Coleman grievance*, February 6, 1985. Swan — 13 pages. (24)

Absence without leave — failure to establish absence because of illness; grievance dismissed. *Re Dance Originals and Tailored Juniors Ltd. & International Ladies Garment Workers' Union; Fernandes grievance*, February 18, 1985. O'Shea — 15 pages. (25)

Absence without notice; failure to call in for 3 consecutive days — grievor suffering from mental depression resulting in erratic behaviour — company having adequate notice of illness; grievance allowed. *Re Consolidated-Bathurst Packaging Limited & International Woodworkers, Local 2-242; Bailey grievance*, January 8, 1985. Beck, Rogers, Kaplan — 24 pages. (26)

Absenteeism; culminating incident — grievor taking counsel in respect to personal problems under provisions of previous grievance settlement; two-month suspension substituted for discharge. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; Lucchetta grievance*, February 9, 1985. Dunn — 5 pages. (27)†

Absenteeism for medical reasons — grievor refusing to return to work until receiving back pay — obliged to return to work then settle question of back pay; grievor to be reinstated but not receive compensation. *Re Certified Brakes, a Division of Lear Siegler Industries Limited & U.S.W.A., Local 14831; Munoz grievance*, February 12, 1985. Brown — 14 pages. (28)

Absenteeism — grievor absent from work as the result of a previous injury to elbow — reinstated conditionally in 1982 pursuant to letter of understanding — company within its rights to use the letter of understanding now; grievance dismissed. *Re Niagara Structural Steel (St. Catharines) Ltd. & U.S.W.A., Local 7012; Cronkwright grievance*, February 6, 1985. Samuels — 5 pages. (29)†

Abuse of employee privilege — three-day suspension appropriate; reinstatement with compensation. *Re Dominion Stores Ltd. & R.W.D.S.U., Local 414 and 465; Mitchell grievance*, February 11, 1985. Brunner, Carrick, Dahmer — 10 pages. (30)

Carelessness resulting in accident — grievor causing similar accident within the same year — grievor not possessing judgement necessary for safe transit of disabled adults; grievance dismissed. *Re All-Way Transportation Corporation (Wheel-Trans Division) & A.T.U., Union Local 113; Hewitt grievance*, February 13, 1985. Knopf — 13 pages. (31)†

Failure to report accident — grievor's work record good; reinstatement ordered. *Re United Parcel Service Canada Ltd. & Teamsters Local 990; Begin grievance*, February 8, 1985. Kirkwood; partial dissent: Brady; dissent: Pischeau — 27 pages. (32)

Failure to report traffic accident immediately — grievor also undermining company's investigation of previous accident; grievance dismissed. *Re International Carriers Limited & Teamsters, Local 880; Scratch grievance*, February 4, 1985. Majority: Kates, Burnell; did not concur: del Junco — 25 pages. (33)

Refusal to wear hearing aid — hearing impairment affecting work performances; reinstatement if grievor prepared to wear hearing aid. *Re E.B. Eddy Forest Products Ltd. & Canadian Papermakers, Local 73; Pariseau grievance*, February 11, 1985. Pyle — 25 pages. (34)†

Fraud: grievor falsifying patients' parking passes to her benefit — grievor's actions premeditated and calculated; grievance dismissed. *Re Ottawa Civic Hospital & C.U.P.E., Local 576; Mallette grievance*, February 1, 1985. Foisy — 7 pages. (35)†

Leaving work without permission — substitution of six-month suspension with no accumulation of seniority credits. *Re Victoria Hospital Corp. & O.N.A.; Duncan grievance*, January 18, 1985. Welling — 17 pages. (36)†

Physical disability — grievor now capable of performing normal duties of her classification; reinstatement with compensation. *Re Rudolph Specialty Bakeries Ltd. & Retail, Wholesale, Bakery & Confectionery Workers, Local 461; Ricciardi grievance*, February 21, 1985. Brunner Whyte, Lenkinski — 10 pages. (37)

Psychiatric illness — work performance affected by illness; reinstatement with compensation. *Re Metropolitan General Hospital & S.E.I.U., Local 210; Lauth grievance*. See (1) *supra*. (38)

Quit alleged — grievor's letter of resignation not voluntary; grievance allowed. *Re Beacon Hill Lodge (Ottawa) & O.N.A.; Coates grievances*, February 21, 1985. Majority: Brent, Minsky; dissent: Harnden — 26 pages. (39)

Quit alleged-schizophrenic condition; grievor incapable of forming voluntary intent to resign; conditional reinstatement. *Re Falconbridge Nickel Mines Limited & Sudbury Mine, Mill and Smelter Workers, Local 598; Leclair grievance*, December 17, 1984. Majority: Verity, O'Neil; dissent: Valin — 18 pages. (40)

Reinstatement without loss of seniority — supplementary award also providing for no loss of service. *Re Air Canada & I.A.M., Lodge 148; Harris grievance*, February 4, 1985. Brunner — 4 pages. (41)

Road accident — grievor guilty of carelessness but not wanton recklessness; two-week suspension substituted for discharge. *Re I.C.L. International Carriers Limited & Teamsters, Local 880; Lamb grievance*, January 27, 1985. Majority: Rayner, Baillargeon; dissent: Burnell — 28 pages. (42)

Sleeping on job; work record poor — culminating incident; progressive discipline applied; grievance dismissed. *Re Toronto, City of & C.U.P.E., Local 79; Reilly grievance*, February 8, 1985. M. Picher — 19 pages. (43)



Theft — isolated transgression; substitution of one-month suspension. *Re Goodyear Tire Inc. & United Rubber Workers, Local 232; Olsen grievance*, February 13, 1985. Burkett — 12 pages. (44)

Theft of company property alleged — theft proven by substantial evidence of witnesses — grievor denying responsibility; grievance dismissed. *Re Brouillettes Manor Limited & S.E.U., Local 210; Gombar grievance*, January 29, 1985. Majority: Brown, Bartlet; did not concur: Libeskind — 46 pages. (45)

Theft of company property — work record good — grievor admitting guilt; six-month suspension substituted for discharge. *Re Owen Sound General and Marine Hospital & O.P.S.E.U.; Waller grievance*, February 18, 1985. Majority: Langille, Switzman; dissent: Redford — 15 pages. (46)

Theft: unauthorized use of employer's phone for long distance calls — admission of guilt and offer of restoration; isolated incident; reinstatement without compensation. *Re Rockwell International of Canada Ltd., Plastics Division, & U.S.W.A., Local 3209; Brennan grievance*, February 14, 1985. Emrich — 17 pages. (47)†

Theft: unauthorized use of employer's phone for long distance calls — pattern of deliberate dishonest conduct; grievance dismissed. *Re Spar Aerospace Ltd. & U.A.W., Local 673; Kupeliah grievance*, February 13, 1985. Schiff — 5 pages. (48)†

Unauthorized removal of company property alleged — grievor's confession of wrong doing proving he was an active accomplice and not an innocent dupe; grievance dismissed. *Re Holland Hitch of Canada Limited & U.A.W., Local 636; Hill grievance*, January 21, 1985. Rayner — 6 pages. (49)

Work performance: deterioration of grievor's physical capacities resulting in inability to perform regular duties; grievor twice refusing lower skilled job; employer acting reasonably; grievance dismissed. *Re McKnight Window Industries, Division of Indal Limited & U.S.W.A., Local 2729; Russcillo grievance*, February 18, 1985. H.D. Brown — 10 pages. (50)

Work performance unsatisfactory and unacceptable behaviour — grievor failing to respond to corrective discipline; grievance dismissed. *Re St. Joseph's General Hospital & S.E.I.U., Local 268; Lotysz grievance*, February 6, 1985. O'Shea — 28 pages. (51)

### Discipline

Absence without notice — technical breach; discipline not justified. *Re Noranda Mines Ltd. (Geco Division) & Canadian Union of Base Metal Workers; MacGregor grievance*, February 18, 1985. O'Shea — 15 pages. (52)

Absent from work without reasonable explanation — grievor embellishing reason for absenteeism; 2-day suspension substituted for 17-day suspension. *Re Walmer Transport Company & Teamsters, Local 879; Bowerbank grievance*, February 8, 1985. O'Shea — 13 pages. (53)†

Consumption of alcohol on company premises alleged — established on evidence; grievance dismissed. *Re Domtar Inc., Packaging Group Corrugated Containers & Canadian Paperworkers, Local 309; Singleton et al grievances*, January 17, 1985. Majority: O'Shea, Brady; dissent: Weisbach — 16 pages. (54)

Consumption of alcohol on job — incident established; grievance dismissed. *Re Metropolitan Toronto, Municipality of & Metropolitan Toronto Civic Employees' Union, Local 43; MacKenzie grievance*, January 30, 1985. Wilson — 8 pages. (55)†

Dress code not observed — new dress code imposed to improve company's image and thereby improve its financial situation — imposition of dress code by management reasonable; grievance dismissed. *Re Dominion Stores Limited & U.S.W.A., Local 14045; Smith grievance*, February 14, 1985. Barton — 15 pages. (56)†

Harassment of other employees alleged — not established; grievance allowed. *Re Windsor Western Hospital Centre (I.O.D.E. Unit) & O.N.A.; Warner and union grievances*. See (18) *supra*. (57)\*

Insubordination alleged — momentary flare-up, five-day suspension reduced to one-day suspension. *Re Masland Carpets of Canada Ltd. & Amalgamated Clothing and Textile Workers, Local 1885; Batista grievance*, January 30, 1985. Davis — 5 pages. (58)†

Insubordination: refusal to follow instructions — not all incidents established; five-day suspension reduced to three days. *Re Domtar Construction Material Ltd. & U.S.W.A., Local 14994; Sitter and Huitema grievances*, February 15, 1985. Wilson — 11 pages. (59)†

Leaving job without permission — illness not established; grievance dismissed. *Re Triumph Sheraton Hotel & Hotel, Restaurant and Cafeteria Employees, Local 75; Simopoulos grievance*, February 15, 1985. Egan — 4 pages. (60)†

Refusal to work overtime — specific agreement by union that employees required to work overtime; written warning substituted for two-day suspension. *Re Victory Soya Mills Ltd. & Teamsters, Local 1247, Chemical, Energy and Allied Workers; Lynam grievance*, February 12, 1985. Brown, Phillips; addendum: Joyce — 24 pages. (61)

Written warning with regard to absenteeism in grievor's file — absences for bona fide medical reasons; letter to be withdrawn from employee's disciplinary record. *Re Alcan Canada Products Limited & U.S.W.A., Local 8754; Taylor grievance*, February 20, 1985. Davis — 12 pages. (62)†

Work performance — Company's standards being reasonable — oral warning justified; grievance dismissed. *Re Ethicon Sutures Limited & United Textile Workers, Local No. 512; Thomas grievance*, February 18, 1985. H.D. Brown — 13 pages. (63)

### Estoppel

Representation by employer — no detrimental reliance because union raising matter of negotiations; grievance dismissed. *Re Ottawa General Hospital & O.N.A., Local 83; union grievance*, January 30, 1985. Roach — 14 pages. (64)\*†

### Grievance Procedure

Policy grievance not to include matters upon which employees personally entitled to grieve — grievance dismissed. *Re Brantford, Corporation of City of & Brantford Civic Employees' Union; policy grievance*, February 20, 1985. Egan — 2 pages. (65)†

Timeliness: breach of mandatory provision — no plausible explanation for delay; delay creating prejudice for employer; grievance not arbitrable. *Re Crothers Ltd. & U.A.W.; Dickson grievance*, February 20, 1985. H.D. Brown — 14 pages. (66)

Timeliness — compliance with time limit; board prepared to hear argument that unreasonable delay but grievance arbitrable. *Re Fanshawe College & O.P.S.E.U.; Sweatman grievance*, February 5, 1985. Brent, Beaulieu; addendum: Wright — 9 pages. (67)

Timeliness: grievance to be launched within ten working days — store in question open 7 days a week — grievance not filed within time limit and therefore not arbitrable. *Re Swiss Chalet Employers' Association & Canadian Union of Restaurant and Related Employees; Ursomarzo grievance*, February 21, 1985. Dunn — 10 pages. (68)

### Holidays

Remembrance Day — removed as school holiday under *Education Act* Regulations; holiday discontinued under terms of collective agreement; grievance dismissed. *Re Grey County Board of Education & O.P.S.E.U.; Leroux et al grievances*, February 13, 1985. Majority: Burkett, Storie; dissent: Switzman — 11 pages. (69)

### Holiday Pay

Qualifying days — not established that grievor granted leave of absence; grievance dismissed. *Re Noranda Mines Ltd. (Geco Division) & Canadian Union of Base Metal Workers; MacGregor grievance*. See (52) *supra*. (70)

### Hours of Work

Guaranteed minimum week — "work week" meaning scheduled work week; grievance allowed. *Re F.W. Fearman Co. Ltd. & U.F.C.W., Local P1227; policy grievance*, February 5, 1985. Majority: Saltman, Robbins; dissent: Davenport — 10 pages. (71)

### Interpretation

Onus — burden of proof not relevant to issues of interpretation. *Re CN/CP Telecommunications & Canadian Association of Communications and Allied Workers; Vonckenkvort grievance*, January 24, 1985. Majority: M. Picher, Beaulieu; dissent: Milley; addendum: Picher, Beaulieu — 55 pages. (72)\*

### Job Posting

Temporary job becoming permanent job — job posted but failure to transfer temporary employee to Utility Group; grievance allowed in part. *Re Dow Chemical Inc. & E.C.W.U., Local 672; union grievance*, February 15, 1985. Hinnegan — 7 pages. (73)†

### Lay-off

Bumping rights — extent to which employee may bump employee in other locations determined. *Re Canadian Broadcasting Corp. & N.A.B.E.T.; lay-off grievances 2, 3, 5*, January 24, 1985. M. Picher — 30 pages. (74)

Contracting-out occurring at same time — no casual link between lay-off and contracting-out; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; lay-off grievance 6*, January 29, 1985. M. Picher — 18 pages. (75)

Existence of bumping rights — lay-off procedure not providing bumping rights; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; M. Oakman grievance*, January 28, 1985. Majority: Welling, Storie; dissent: Marshall — 9 pages. (76)

Extent of seniority rights — extending only to classification and not craft group; grievance dismissed. *Re Ault Dairies, Division of Ault Foods Ltd. & Milk and Bread Drivers, Local 647; Winacott grievance*, February 4, 1985. Dunn — 6 pages. (77)†

Geographical regions for purposes of bumping — British Columbia and Northern Services to constitute a single region; grievance allowed. *Re Canadian Broadcasting Corp. & N.A.B.E.T., expedited lay-off grievance No. 9*, February 15, 1985. M. Picher — 15 pages. (78)

Joint manpower committees; required scope of disclosure and discussion — pursuit of suitable alternative employment to be central focus; no mandate to deal with employer's rationale for staff reductions; grievance dismissed. *Re Canadian Broadcasting Corp. & C.U.P.E., expedited grievance No. 1*, February 13, 1985. M. Picher — 23 pages. (79)

Qualifications — grievor not as experienced; grievance dismissed. *Re Atomic Energy of Canada Ltd. & P.S.A.C., Local 00358; Hodges grievance*, February 1, 1985. Weatherill — 12 pages. (80)

Qualifications: grievor performing work in a new classification resulting from work shortage in the Assembly Plant — company directed to offer grievor a familiarization period and then assess grievor's ability to perform the job. *Re MTD Products Limited & U.A.W., Local 1524; Steeves grievance*, February 8, 1985. Black — 11 pages. (81)†

Qualifications to bump up to lead hand — ability to perform work established; grievance allowed. *Re Phillips Cables Ltd. & I.U.E.; Jellema grievance*, December 3, 1984. Teplitsky, Nabi; addendum: Gordon — 8 pages. (82)

Reassignment and relocation rights — upwards reassignment permitted; job posting provisions qualified. *Re Canadian Broadcasting Corp. & N.A.B.E.T.; lay-off grievance 1*, January 23, 1985. M. Picher — 15 pages. (83)

Re-location of employees — no obligation to provide Home Disposal Plan; grievance dismissed. *Re Canadian Broadcasting Corp. & N.A.B.E.T.; lay-off grievance 8*, January 25, 1985. M. Picher — 14 pages. (84)



### Leave of Absence

Leave for personal reasons — letter of understanding in conflict with collective agreement; employer entitled to enquire as to reasons; grievances dismissed. *Re Sudbury District Roman Catholic Separate School Board & A.E.F.O., Unit Sudbury Elementaire; Association grievance*, December 22, 1983. M. Picher — 18 pages. (85)

### Overtime

Distribution — assignment involved continuation of job in progress; properly assigned to man already on job; grievance dismissed. *Re Dow Chemical Canada Inc. & E.C.W.U., Local 672; Boughner grievance*, February 19, 1985. Hinnegan — 6 pages. (86)†

Distribution — evidence not establishing a refusal of overtime opportunity; grievor entitled to overtime on basis of seniority and to be compensated for loss; grievance allowed. *Re Algoma Steel Corp. Ltd., Tube Division & U.S.W.A., Local 5595; Crema grievance*, February 22, 1985. Davis — 8 pages. (87)†

Distribution — violation of seniority principle; grievance allowed. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Local 279; Wright grievance*, January 25, 1985. Majority: Roach, Emond; dissent: Harnden — 12 pages. (88)

Rescheduling of shift to begin two hours earlier — “day” interpreted as 24-hour period commencing with first shift in week; first two hours overtime; grievance allowed. *Re The Great Atlantic and Pacific Co. Ltd. & R.W.D.S.U., Local 414; group grievance*, February 8, 1985. Majority: Hinnegan, Dahmer; dissent: Dinsdale — 5 pages. (89)

### Overtime Pay

Saturday work — negotiating history not establishing that overtime rates applicable; grievance dismissed. *Re Dickenson Mines Ltd. & U.S.W.A., Local 1950; Byerley grievance*, February 12, 1985. Foreman — 14 pages. (90)

### Pensions

Change of carrier — no implied right to change; grievance allowed. *Re Hotel Dieu Hospital & O.N.A.; policy grievance*, January 11, 1985. M. Picher, Healy, Gordon — 12 pages. (91)

### Procedure

Adjournment — employer not releasing union representative from normal duties; refusal reasonable; hearing to be adjourned without costs to union. *Re Fanshawe College & O.P.S.E.U.; Wilson grievance*. February 18, 1985. Majority: O’Shea, Hubert; dissent: Marszewski — 8 pages. (92)

Adjournment requested because of surprise — employer’s replies in the grievance procedure considered; adjournment granted on terms. *Re Computing Devices Co. & Employees’ Association Computing Devices Co.; Carmichael et al grievances*, February 11, 1985. Majority: Abbott, Robbins, partial dissent: Green — 5 pages. (93)

### Promotion

Existence of promotion — move from driver to warehouseman not a promotional opportunity, constituting transfer and bargaining unit seniority applicable; retention of jurisdiction to determine if grievor entitled to job. *Re Martin-Brewer of Canada Ltd. & Teamsters, Local 419; Landriault grievance*, February 6, 1985. Gandz — 9 pages. (94)†

Failure to sign written undertaking to meet French language requirement — undertaking reasonable in circumstances; grievance dismissed. *Re Air Canada & I.A.M., District Lodge 148; Cselnyi grievance*, February 9, 1985. Kates — 10 pages. (95)

Limited job — grievor having less immediate knowledge and familiarity with particular mine; grievance dismissed. *Re Inco Ltd. & U.S.W.A., Local 6500; Kelly grievance*, January 29, 1985. Majority: Hinnegan, Fortier; did not concur: Signoretti — 17 pages. (96)

Qualifications — employer failing to consider all relevant evidence; matter remitted to employer for reconsideration. *Re Kingston General Hospital & O.N.A.; Blundell grievance*, January 15, 1985. Majority: Teplitsky, Boettcher; addendum.

Qualification — experience in Operating Room — essential to the job; grievor not relatively equal; grievance dismissed. *Re Mount Sinai Hospital & O.N.A.; Cornwall grievance*, January 15, 1985. Majority: Teplitsky, Boettcher, addendum: McIntyre — 6 pages. (98)

Qualifications — grievor establishing relative equality and possessing seniority; grievance allowed. *Re Coca-Cola Ltd. & United Brewery Workers; Syzmanski grievance*, February 1, 1985. McLaren — 9 pages. (99)

Qualifications; grievor not able to meet required level of attendance due to medical problems — grievor not producing medical certificate as proof of his improved physical condition; employer justified in not assigning him to new position. *Re Alcan Canada Products Limited & U.S.W.A., Local 8754; Taylor grievance*. See (62) *supra*. (100)†

Qualifications — improper application of physical fitness factor; damages of \$100 appropriate remedy as grievor given next full-time position. *Re Niagara Regional Municipality & C.U.P.E., Local 1263; Gasiorek grievance*, February 25, 1985. McLaren, Davidson; addendum: Metcalfe — 15 pages. (101)

Qualifications — no entitlement to trial period; grievor not having significant relevant experience; grievance dismissed. *Re Sonco Steel Tube Ltd. & U.S.W.A.; Avila grievance*, February 6, 1985. Weatherill — 9 pages. (102)

Qualifications — relative equality established even though marginal difference; position awarded to grievor. *Re Guelph General Hospital & C.U.P.E., Local 57; Detzler grievance*, February 13, 1985. Hunter — 21 pages. (103)†

## Recall

Qualifications — grievor not establishing potential to perform job within stipulated period of instruction; grievance dismissed. *Re Fleet Industries & I.A.M., Local 939; Buckley and policy grievances*, February 11, 1985. Saltman — 13 pages. (104)

## Scheduling of Work

Part-time employees' hours reduced — size of work-force determined by manager — no unfair treatment established; grievance dismissed. *Re Swiss Chalet Employers' Association & Canadian Union of Restaurant and Related Employees; Ursomarzo grievance*. See (68) *supra*. (105)

Permanent shifts discontinued — posting of job as having permanent shifts not binding employer; change of shifts not arbitrary or unreasonable; grievance dismissed. *Re Scarborough Centenary Hospital Association & C.U.P.E., Local 1320; Ulett grievance*, February 12, 1985. Brent — 9 pages. (106)

Rotational shifts — no restriction on employer assigning just junior employees to rotational shifts; grievance dismissed. *Re Koehring Canada Ltd., Watorous Woodlands Division & I.A.M., Lodge 1105; Hayward grievance*, February 21, 1985. Majority: Brown, Storie; dissent: Solberg — 12 pages. (107)

## Seniority

Accumulation of seniority during training for supervisory duties — employee still in bargaining unit and seniority accumulates; grievance dismissed. *Re TRW Canada Ltd., Thompson Products Division & Thompson Products Employees' Association; policy grievance*, February 20, 1985. Majority: Dunn, Robinson; dissent: Tate — 11 pages. (108)

Bumping rights applicable if move of headquarters — move constituting move of "headquarters location"; grievance allowed. *Re CN/CP Telecommunications & Canadian Association of Communications Allied Workers, Vonckenkevort grievance*. See (72) *supra*. (109)\*

Revision of seniority list — seniority dates of employees on existing list becoming fixed; grievance allowed in part. *Re Atomic Energy of Canada Ltd. & P.S.A.C., Local 70367; policy grievance*, February 7, 1985. Simmons, Healy, Jewitt — 12 pages. (110)

## Sick Leave

Extent of plan — credits also covering short-term illness; maximum a revolving credit bank; plan available to all employees once probationary period completed. *Re St. Raphael's Nursing Home & S.E.I.U., Local 204; Kotis grievance*, January 28, 1985. Majority: Swan, Solberg; dissent: Graham — 12 pages. (111)

## Sick Pay

Calculation of sick pay supplement for employee in alternate-rated position — to be calculated on basis of alternate rate and not permanent classification rate; grievance allowed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 43; Bognar grievance*, January 24, 1985. Majority: P. Picher, Tate; dissent: Jarvis — 24 pages. (112)

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Qualifications for lower-rated position — grievor having less experience for position; grievance dismissed. *Re St. Joseph's General Hospital & C.U.P.E., Local 243; Emby grievance*, February 4, 1985. Betcherman — 5 pages. (113)†

Transfer of job to another department — right of person in former department to claim job to be exercised during life of collective agreement in force at time of transfer; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Stewart grievance*, February 14, 1985. Foisy — 8 pages. (114)†

## Union Officials

Preferential seniority — right to exercise preferential seniority as soon as natural seniority would result in transfer out of department; grievance allowed. *Re Camco Inc. & U.E., Local 550; Davies and Scott grievances*, February 20, 1985. Davis — 10 pages. (115)\*†

Priority for overtime — priority in respect of shift on which committeeman regularly works; grievance allowed. *Re Holmes Foundry, Division of American Motors (Canada) Inc. & U.A.W., Local 456; Kirby grievance*, February 5, 1985. Kennedy — 8 pages. (116)

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Discharge of union president — still entitled to access to union office on company premises; grievance allowed. *Re Keeprite Inc. & Keeprite Workers' Independent Union; policy grievance*, February 14, 1985. Boscariol — 5 pages. (117)†

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Calculation where absent on maternity leave — leave not "approved leave" under collective agreement; employer not exempted from alternative payment mechanism; grievance allowed. *Re Kruger Inc. & Canadian Paperworkers, Local 1646; Connell grievance*, January 31, 1985. McLaren — 11 pages. (118)

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Requirement to take vacation even though no entitlement to vacation pay — grievor entitled to continue working on job as long as it was there; grievance allowed. *Re Reynolds Aluminum Co. of Canada Ltd. & Int'l. Molders and Allied Workers, Local 28; Hrvatin grievance*, February 11, 1985. Weatherill — 13 pages. (119)\*



Scheduling — seniority bidding rights not restricted on the basis of shift; grievance allowed. *Re Consumers Glass Ltd. & Aluminum, Brick and Glass Workers, Local 220G; Carabott grievance*, January 18, 1985. M. Picher — 14 pages. (120)

#### Wages

Increments to occur within time frame — time referring to accumulated seniority; grievance allowed. *Re Fiberglass Reinforced Plastics Systems & Sheet Metal Workers; Local 397; union grievance*, January 7, 1985. Majority: Phillips, Johnson; dissent: Schraml — 11 pages. (121)

#### Welfare Plans

Amount of deductibility for retired employees — long-standing practice of some deductible for all employees; grievance allowed. *Re Courtaulds (Canada) Inc. & Amalgamated Clothing and Textile Workers, Local 779; policy grievance*. February 18, 1985. Kates — 12 pages. (122)

Drug plan — change in manner of applying deductible amount; provisions of handbook incorporated in collective agreement; grievance allowed. *Re Westclox Canada Ltd. & Communication Workers, Local 750; policy grievance*, February 8, 1985. O'Shea — 13 pages. (123)†

#### Work Assignment

Foreladies performing same work as bargaining unit members — practice existing at time collective agreement made; no encroachment on work normally performed by bargaining unit; grievance dismissed. *Re Fireco Inc. & U.S.W.A.; policy grievance*, February 20, 1985. Davis — 5 pages. (124)

Selling of stamps at stamp shows — bargaining unit work even though performed outside Post Office station; grievance allowed. *Re Canada Post Corp. & C.U.P.E.; Cotenacci et al grievances*, February 5, 1985. Teplitsky — 7 pages. (125)

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# Monthly Bulletin



Ontario Ministry of Labour

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Office of Arbitration as a service to  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of March, 1985. The

summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Inequitable workload alleged — internal committee failing to resolve matter; grievance arbitrable. *Re Fanshawe College & O.P.S.E.U.*; *Beiman grievance*, February 28, 1985. Brown, Ziembra, Koskie — 10 pages. (1)

## Bargaining Unit

Scope of unit — not extending to Art Gallery which has separate employer identity; grievance dismissed. *Re The Centre in the Square & International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Kitchener Local No. 357; policy grievance*, February 27, 1985. Egan — 11 pages. (2)†



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Additional assignment on a seasonal and rotating basis — not a material change in job function; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; grievance No. 143*, March 22, 1985. M. Picher — 12 pages. (3)

Higher classification claimed — grievor not fully qualified for position and not required to perform all functions; grievance dismissed. *Re Inco. Ltd. & U.S.W.A.; Campbell grievance*, February 27, 1985. Majority: O'Shea, Simpson; dissent: Farrell — 13 pages. (4)

Higher classification claimed — no opening in higher classification; grievance dismissed. *Re Baltimore Aircoil Inter-American Corporation & U.S.W.A.; Spence grievance*, March 18, 1985. Hearn — 16 pages. (5)†

Higher classification sought — claim for higher classification not proven on basis of improper or discriminatory classification; grievance dismissed. *Re The Royal Ontario Museum & O.P.S.E.U., Local 543; Dias grievance*, March 19, 1985. Saltman; partial dissent: Davies; dissent: Kaufman — 31 pages. (6)

Higher classification sought — not established; grievances dismissed. *Re Ottawa General Hospital & O.P.S.E.U., Local 422; Pigeon and Roberts grievances*, March 4, 1985. Pyle — 17 pages. (7)†

**Contracting Out**

Use of common carrier for customer deliveries — no express restriction on contracting-out; estoppel not applicable; grievance dismissed. *Re MacMillan Bathurst Inc. & International Woodworkers, Local 2-100; group grievance*, February 28, 1985. Majority: MacDowell, Rogers; dissent: Kaplan — 16 pages. (8)

**Demotion**

Attendance unsatisfactory — employer granting leaves of absence without indicating to grievor her employment being placed in jeopardy; duty of employer to closely examine reasons for absences; grievance allowed. *Re Public General Hospital Society of Chatham & S.E.U., Local 210; DeBlois grievance*, March 8, 1985. Majority: Gorsky, Solberg; dissent: Rundle — 19 pages. (9)

Re-assignment to lower-rated job to make room for more senior employee — not a demotion but an improper displacement; grievance allowed. *Re Cobourg and District Ambulance Service & O.P.S.E.U.; Johnston grievance*, February 27, 1985. Thorne — 9 pages. (10)†

Secondary school principal re-assigned as elementary school principal with reduced salary — not a disciplinary demotion, just cause not applicable; grievance dismissed. *Re Muskoka Board of Education & O.S.S.T.F., Muskoka Division; Bildson grievance*, February 28, 1985. Majority: McKechnie, Riddell; dissent: McNeil — 17 pages. (11)

**Discharge**

Absenteeism — excessive absenteeism established by employer, future improvement unlikely; grievance dismissed. *Re Victoria Hospital Corporation & London and District Service Workers' Union, Local 220; Simmons grievance*, March 22, 1985. Welling — 12 pages. (12)†

Absenteeism — inability to perform job not established; failure to mitigate damage; reinstatement without compensation. *Re Central Hospital & S.E.I.U., Local 204; Timothy grievance*, March 4, 1985. Foisy — 14 pages. (13)†

Abuse of patient — previous incidents; grievance dismissed. *Re Belleville General Hospital & S.E.I.U., Local 183; Mahoney grievance*, March 20, 1985. England — 27 pages. (14)\*†

Accident caused by driver falling asleep at wheel — grievor aware of his fatigue; misrepresenting cause of accident; grievance dismissed. *Re Voyageur Colonial Ltd. & Canadian Brotherhood of Railway Transport and General Workers; DeGray grievance*, March 14, 1985. Dunn — 9 pages. (15)

Altercation with fellow employee — isolated emotional flare-up; grievor to apologize; reinstatement without compensation. *Re Bell Canada & Communications Workers; Chatter grievance*, March 7, 1985. M. Picher, Sinclair, Beaulieu — 14 pages. (16)

Appropriate remedy where unjust discharge — reinstatement appropriate despite long delay in proceedings; compensation also directed. *Re Toronto, Corporation of the City of, & C.U.P.E., Local 79; Risdon grievance*, February 26, 1985. Majority: Christie, Tate; addendum: Paulin — 28 pages. (17)\*

"At fault" accidents — grievor responsible for two accidents within one year; grievor violating employer policy designed to prevent potential danger to handicapped passengers; grievance dismissed. *Re All-Way Transportation Corporation (Wheel-Trans Division) & A.T.U., Local 113; Wilson grievance*, February 27, 1985. Devlin — 18 pages. (18)†

"At fault" accident; culminating incident — grievor involved in four disciplinable incidents in five months; grievor not showing sufficient degree of skill; grievance dismissed. *Re Wheel Trans (Scarborough) (All-Way Transportation Corp.) & A.T.U., Local 113; Pierre grievance*, January 26, 1985. Majority: Barton, Billings; dissent: Beaulieu — 10 pages. (19)

Attempted theft — serious personal problems; reinstatement without compensation. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Local 2251; Richtig grievance*, March 7, 1985. H.D. Brown, Morley, Woodcock — 24 pages. (20)

Casual employee; employer failing to warn grievor that his work performance needed to improve — employer having right to discharge employee within first six months of employment; grievance dismissed. *Re Toronto, Corporation of the City of, & C.U.P.E., Local 43; Gray grievance*, March 11, 1985. Majority: Simmons, Milks; dissent: Tate — 20 pages. (21)

Dishonesty; receipt of wages for time spent performing part-time job with other employer — reinstatement without compensation to different position not requiring trust. *Re Ottawa-Carleton, Regional Municipality of & C.U.P.E., Local 503; Bean grievance*, March 18, 1985. Burkett, Vice; addendum: Switzman; addendum: Burkett — 16 pages. (22)\*

Drug usage resulting in absenteeism, poor work record, forged certificates — grievor working at solving his problems; conditional reinstatement without compensation. *Re Hamilton Civic Hospitals & C.U.P.E., Local 794; Joslin grievance*, March 22, 1985. Majority: Kennedy, MacDermid, Bouchard; addendum: MacDermid, Bouchard — 15 pages. (23)

Quit alleged; letter of resignation — no subjective intention to quit; reinstatement without compensation. *Re Victoria County Board of Education & C.U.P.E., Local 855; McCausland grievance*, March 11, 1985. Thorne — 20 pages. (24)†

Substitution of lesser penalty where improper issuing of parking tickets — no jurisdiction to modify penalty; not appropriate in circumstances; grievance dismissed. *Re Metropolitan Board of Commissioners of Police & Metropolitan Toronto Police Association, Unit C; Horvath grievance*, March 15, 1985. McLaren — 23 pages. (25)

Theft of company property alleged — grievor's explanation of his conduct not credible; grievor's involvement sufficiently established; grievance dismissed. *Re Massey-Ferguson Industries Limited & U.A.W., Local 458; Dunbar grievance*, March 20, 1985. Dunn — 10 pages. (26)†

### Discipline

Absence during the Christmas holiday period — grievor ill; no just cause to discipline grievor; grievance allowed. *Re Sunnycrest Nursing Home Limited & C.U.P.E., Local 132; Lattibeaudere grievance*, March 26, 1985. Kirkwood — 5 pages. (27)†

Absence without leave — progressive discipline not applied; grievor providing adequate explanation for failure to attend work; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; Duquette grievance*, February 25, 1985. P. Picher — 12 pages. (28)

Abusive language directed at fellow employee — suspension for day and a half not excessive; grievance dismissed. *Re Chedoke-McMaster Hospitals & C.U.P.E., Local 839; Pei grievance*, March 4, 1985. Barton — 7 pages. (29)†

Assault upon resident alleged — not established; grievance allowed. *Re St. Raphael's Nursing Home & S.E.I.U., Local 294; Thomas grievance*, February 28, 1985. Wilson — 7 pages. (30)†

Assault upon supervisor alleged — spitting in supervisor's face established; ten-day suspension reasonable. *Re Canada Post Corporation & C.U.P.W.; Jolicoeur grievance*, March 25, 1985. Burkett — 7 pages. (31)

Chairperson of Health and Safety Committee disciplined for exceeding authority — not justified; grievance allowed. *Re Permalite and Industries, Division of Susan Shoe Industries Ltd. & United Textile Workers, Local 369; Badeau grievance*, March, 1985. McCulloch — 5 pages. (32)†

Inflammatory document critical of employer — grievor only partly responsible; 30-day suspension reduced to 10 days. *Re St. Catharines Transit Commission & A.T.U., Local 846; Etheridge grievance*, February 25, 1985. Betcherman — 8 pages. (33)†

Insubordination and use of abusive profanity towards foreman — reprimand justified; grievance dismissed. *Re Les Aliments Dainty Foods Inc. & United Brewery Workers, Local 278; Boufford grievance*, March 20, 1985. Hinnegan — 3 pages. (34)

Insubordination; grievor refusing to follow Principal's directions regarding course outline — written apology and reprimand in grievor's file to be substituted for freezing of salary. *Re Canadian Forces Base Ottawa Board of Education & O.P.S.T.F.; Lavandusky grievance*, February 5, 1985. Adell, Hill, Minuk — 20 pages. (35)

Insubordination to supervisor — written warning substituted for suspension; grievance allowed in part. *Re Stanley Precision Inc. & U.S.W.A., Local 4444; Serpan grievance*, March, 1985. McCulloch — 4 pages. (36)†

Unauthorized absence from work — company doctor advising grievor he was fit for work; grievor not returning to work upon advice of personal physician, but not presenting own medical evidence; company acting reasonably; grievance dismissed. *Re Humpty Dumpty Foods Limited & Retail, Wholesale, Bakery and Confectionery Workers, Local 461; Sabharwal grievance*, March 13, 1985. Majority: Kennedy, Davie; dissent: Reekie — 10 pages. (37)

Unauthorized work break — established on evidence; progressive discipline applied; grievance dismissed. *Re Canada Post Corporation & C.U.P.W.; Li and Liu grievances*, February 28, 1985. Burkett — 15 pages. (38)

### Estoppel

Alteration of moving day policy — union having opportunity to negotiate once privilege withdrawn; no detrimental reliance; grievance dismissed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; policy grievance*, February 28, 1985. P. Picher — 18 pages. (39)

Conduct during negotiations — evidence not establishing oral representation to eliminate sub-contractors; failure to supply information not amounting to misrepresentation; grievance dismissed. *Re Bell Canada & Communications Workers; Purdy grievance*, February 28, 1985. Majority: Burkett, Churchill-Smith; dissent: Robbins — 33 pages. (40)

Pay-out of sick pay altered — estoppel not applicable; grievance dismissed. *Re Monarch Fine Foods Co. Ltd. & Milk and Bread Drivers, Local 647; Ranger grievance*, March 26, 1985. Schiff — 15 pages. (41)\*†

### Evidence

Opinion evidence — views of employers administrative staff not admissible. *Re Hamilton, Board of Education for the City of & Hamilton Teachers' Federation; federation grievance*, March 27, 1985. Majority: Weatherill, MacDermid; dissent: Koskie — 31 pages. (42)

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Work assignment for skilled trades — special procedure applicable. *Re Spar Aerospace Ltd. & U.A.W., Local 112; group grievance*, March 16, 1985. Gandz — 5 pages. (44)†



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Junior employees mistakenly reporting for work on holidays — assignment of work to these employees in violation of seniority provisions; senior employees entitled to compensation; junior employees estopped from claiming premium rate. *Re Travelways Maple Leaf Ltd. & Canadian Brotherhood of Railway Transport and General Workers; Molder et al grievances*, February 20, 1985. D.W. Scott — 10 pages. (46)

Last working day before Christmas to be treated as half-day holiday — referring to grievor's last working day; grievance allowed. *Re Oakville Hydro-Electric Commission & I.B.E.W., Local 1766; Marshall grievance*, March 14, 1985. Knopf — 11 pages. (47)†

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Paid lunch period — only those employees actually working eight hours entitled; grievance dismissed. *Re Hyland Crest Senior Citizens' Home & C.U.P.E., Local 1225; policy grievance*, March 14, 1985. Majority: McLaren, Smith; dissent: Hodges — 12 pages. (49)

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Part-time employees — no obligation to offer increase in hours to incumbent part-time employees before posting full-time position; grievance dismissed. *Re Baycrest Centre for Geriatric Care & O.P.S.E.U.; policy grievance*, November 6, 1984. Teplitsky, Robbins, MacDermid — 4 pages. (55)

Substitute service assistant position — employer may fill vacancy by transfer rather than posting; grievance dismissed. *Re Bell Canada & Communications Workers; Kelly grievance*, March 13, 1985. Majority: Burkett, Filion; dissent: Robbins — 19 pages. (56)

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Status of employees on medical leaves of absence — not subject to lay-off until return to work; grievance allowed. *Re Canadian Broadcasting Corporation & C.U.P.E.; expedited grievance No. 3*, March 1, 1985. M. Picher — 24 pages. (60)\*

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Promulgation of rules — rule relating to storage of revolvers reasonable; rule relating to employment of relatives unreasonable. *Re Brink's Canada Ltd. & Teamsters, Local 419; policy grievance*, March 6, 1985. Majority: Saltman, Brisbin; dissent: O'Driscoll — 15 pages. (64)\*

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Casual employees — entitled to premium pay for holidays; grievance allowed. *Re Espanola General Hospital & O.N.A.; union grievance*, March 14, 1985. Adamson — 12 pages. (69)†

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Qualifications — full-time nurse need only establish that qualified when competing with part-time nurse; grievance allowed. *Re Bowmanville Memorial Hospital & O.N.A.; Jones grievance*, March 12, 1985. Barrett — 10 pages. (76)†

Qualifications — relative ability not established; grievance dismissed. *Re Silvaco Ontario & United Cement, Lime, Gypsum and Allied Workers, Local 527; Barton grievance*, February 28, 1985. Hinnegan — 4 pages. (77)

Qualifications — relative equality not established; grievance dismissed. *Re Ontario Cancer Treatment and Research Foundation, Hamilton Clinic & C.U.P.E., Local 794; Morrow grievance*, March 11, 1985. Dunn — 9 pages. (78)†

Trial period — performance unsatisfactory; grievance dismissed. *Re Hastings, Corporation of the County of & I.U.O.E., Local 793; Rose grievance*, March 7, 1985. Thorne — 12 pages. (79)†

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Company-wide seniority applied for purpose of lay-off — seniority to be by location; grievance allowed. *Re Millwork and Building Supplies Co. Ltd. & Teamsters, Local 230; Jordon and Vanheuver grievance*, February 22, 1985. O'Shea — 9 pages. (85)

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Calculation of sick leave cashout benefit for part-time employees — "day" meaning full day; grievance allowed. *Re Ottawa Civic Hospital & C.U.P.E., Local 576; policy grievance*, December 20, 1984. Roach, Head, Lapointe — 12 pages. (87)

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Assignment to lower-rated classification — work available in grievor's classification; grievor possessing seniority; entitlement to compensation for losses; grievance allowed. *Re Date Industries Limited & Int'l. Molders and Allied Workers, Local 29; Oliveira grievance*, March 7, 1985. Weatherill — 9 pages. (88)\*

Assignment to lower-rated job because of downturn in business — improper demotion — grievor entitled to exercise bumping rights; grievance allowed. *Re Galt British Forge Company & U.S.W.A., Local 8818; Bickford grievance*, March 8, 1985. O'Shea — 10 pages. (89)

**Uniforms**

Change of style of uniform — employees obliged to buy shirt; grievance dismissed. *Re Westin Hotel & Hotel, Restaurant and Cafeteria Employees Union, Local 75; union grievance*, March 14, 1985. Schiff — 7 pages. (90)†

**Vacation Pay**

Calculation — to be based on all wages earned including prior vacation pay; estoppel not applicable; grievance allowed. *Re Hobart Brothers of Canada Ltd. & Int'l Molders and Allied Workers, Local 246; policy grievance*, March 7, 1985. Gandz — 9 pages. (91)

**Wages**

Effect of Inflation Restraint Act upon expiry of control period — not preventing all career development increases from being included in nominal salaries; grievance allowed. *Re Carleton University & Carleton University Academic Staff Association; association grievance*, March 4, 1985. Kruger — 23 pages. (92)\*

**Welfare Plans**

Extent of employer's obligation — employer obliged only to pay premiums; grievance dismissed. *Re Haun Drop Forge Co. Ltd. & U.A.W.; Walker and Warner grievances*, March 27, 1985. H.D. Brown — 8 pages. (93)

Dental plan; only current claims to be reimbursed at 100 percent — grievor's claim not including ongoing work; grievance dismissed. *Re Mack Canada Inc. & I.A.M., Lodge 2281; Bucknall grievance*, March 7, 1985. Kennedy — 10 pages. (94)

**Work Assignment**

Assignment resulting in reduced hours for more senior employee — employer entitled to assign grievor's duties to junior, more qualified employee; grievance dismissed. *Re Red Oak Inn & Hotel, Restaurant and Cafeteria Employees, Local 75; Smith grievance*, March 18, 1985. Lerner — 14 pages. (95)†

Employee mistakenly reporting for work assigned four hours of work — recall provisions not applicable; estoppel not applicable; grievance dismissed. *Re Inglis Ltd. & U.A.W., Local 525; Henderson grievance*, March 4, 1985. Barton — 11 pages. (96)

Failure to replace operator or troubleman when absent because of illness — employer required to make effort to find replacement and pending replacement, employee on next preceding shift entitled to work; grievance allowed. *Re North York Hydro & C.U.P.E., Local 11; union grievance*, February 26, 1985. Schiff — 10 pages. (97)†

Removal of insulation — insulators not having exclusive jurisdiction over work; grievance dismissed. *Re Eldorado Resources Limited, Port Hope, Ontario & U.S.W.A., Local 3173; Murray grievance*, March 7, 1985. Brent — 8 pages. (98)

Taping of new programmes for automated paint line — not work normally performed by bargaining unit; special job or development work; grievance dismissed. *Re Storwal International Inc. & U.S.W.A., Local 3257; Mau grievance*, February 26, 1985. Pyle — 11 pages. (99)†

Unfair change of work assignment and denial of overtime alleged — company possessing right to change work assignments; grievance dismissed. *Re Drug Trading Company Limited, Toronto & E.C.W.U., Local 11; McLeod grievance*, March 12, 1985. Black — 7 pages. (100)

**Construction Industry Arbitration — Ontario Labour Relations Board**

The following awards were filed with the Office of Arbitration during the months of February, May, and June, 1985.

**Classification**

Progression — one thousand hours of employment as a probationary material handler must be worked before progression to Roofer #3 — Material Handler — interim award. *Re Biscombe B.R.S. Limited & Sheet Metal Workers, Local 504; union grievance*, April 26, 1985. Satterfield, Stamp, O'Flynn — 10 pages. (101)

**Collection**

Union dues — remittances ascertained and ordered to be paid. *Re Aquatic Fire Protection Limited & The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 853; union grievance*, April 22, 1985. Knopf, Wightman, Collins — 4 pages. (102)

Wages quantified and ordered to be paid; grievance allowed. *Re Wilson Excavating and Grading Ltd. & I.U.O.E., Local 793; Wannamaker grievance*, April 1, 1985. Franks, Murray, Grasso — 2 pages. (103)

Failure to hire union members — order to pay issued. *Re Bertozzi Roofing & Sheet Metal Inc. & Sheet Metal Workers, Local 537; union grievance*, May 1, 1985. Satterfield, Stamp, Rutherford — 4 pages. (104)

Vacation pay, union dues and welfare benefits unpaid by employer — order to pay issued. *Re Lincar Mechanical Ltd. & C.L.A.C.; union grievance*, May 15, 1985. Mitchnick, Wightman, O'Flynn — 2 pages. (105)

Remittances for benefit plans — payment directed. *Re Blok Mechanical Contractors Ltd. & United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry, Local 46; January 14, 1985*. Franks, Wilson, Ballentine — 2 pages. (106)

Remittances for union dues, welfare and related funds — payment with interest ordered. *Re Pit-On Construction Co. Ltd. & I.U.O.E.*, January 28, 1985. Furness, Kobryn, Wilson — 2 pages. (107)

#### Discharge

Breach of company rule requiring reporting of absence — failure to advise the company that absence related to work-related injury — six-week suspension substituted. *Re Electrical Power Systems Construction Association and Ontario Hydro & Ontario Allied Construction Trades Council and Laborers, Local 597; Callan grievance*, April 29, 1985. Majority: Satterfield, Wilson; dissent: Ballentine — 11 pages. (108)

#### Travel Allowance

Leaving of assembly point, prior to designated time — entitlement to travel allowance not earned; grievance dismissed. *Re Electrical Powers Systems Construction Association and Ontario Hydro, & I.B.E.W., Electrical Power Systems Construction Council of Ontario*, January 30, 1985. Majority: Furness, Wightman; dissent: Ballentine — 10 pages. (109)

#### Union Security

Employer bound to hire and employ only bargaining unit members — compensation awarded for eight-week period; non-bargaining unit employees retained; grievance allowed. *Re Lanewood Corp. & United Association of Journeymen and Apprentices of the Plumbing and Pipe-fitting Industry, Local 463; union grievance*, April 29, 1985. Springate, Pirrie, O'Flynn — 2 pages. (110)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the months of May and June, 1985.

*Extencicare Health Services Inc. (Ottawa West End Villa and Laurier Manor) & O.N.A.*; Majority: Pyle, McGarva; dissent: McIntyre — 29 pages.

*Sudbury Memorial Hospital & C.U.P.E., Local 161;* V.E. Scott, Dean, Gilchrist — 14 pages.

*Village Green Nursing Home & S.E.U., Local 183;* Willes; dissents: Graham, Libeskind — 14 pages.

*Teck Pioneer Residence & O.N.A.*; Majority: H.D. Brown, Ellies; partial dissent: Symes — 37 pages.

*V.S. Services Ltd. (Runnymede Hospital) & Workers' Union of Queen Elizabeth Hospital;* Brunner; dissents: Whyte, Harris — 11 pages.

*Terrace Lodge (Corporation of the County of Elgin) & L.D.S.W.U., Local 220;* Majority: Ord, Switzman; addendum: Switzman; partial dissent: Hyde — 23 pages.

*Elgin Manor (Corporation of County of Elgin) & L.D.S.W.U., Local 220;* Majority: Ord, Switzman; partial dissent: Hyde — 8 pages.

*Windsor Hospitals Joint Bargaining & S.E.U., Local 210 (Central Issues)* including: Metropolitan General Hospital, Salvation Army Grace Hospital, Hotel Dieu of St. Joseph of the Diocese of London, Windsor Western Hospital (I.O.D.E.), and Windsor Western Hospital (Riverview); Majority: McKechnie, Burnell; dissent: Solberg — 17 pages.

*Benevolent Society Heidehof for the Care of the Aged & Christian Labour Association of Canada;* Majority: H.D. Brown, Adema; dissent: Churchmuch — 22 pages.

*Peel Manor and Sheridan Villa Homes for the Aged (Regional Municipality of Peel) & O.N.A.*; Majority: Swan, Filion; dissent: Ballantyne — 26 pages.

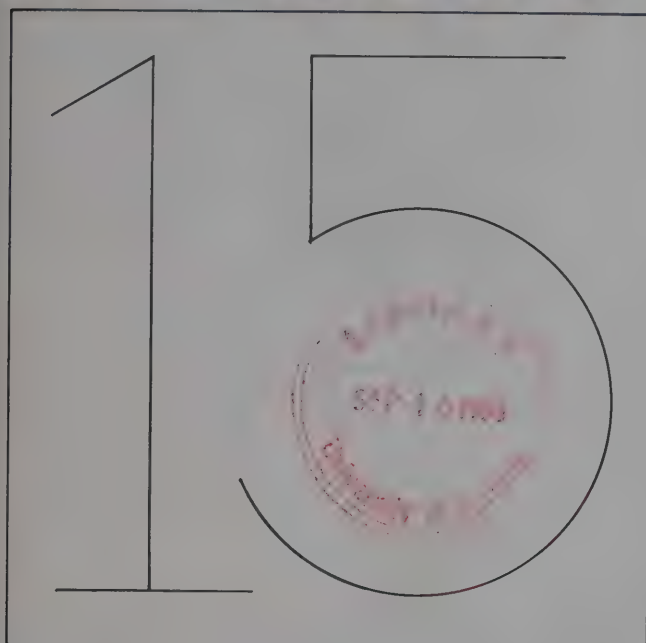
*Ontario Cancer Treatment and Research Foundation (Thunder Bay Clinic) & C.U.P.E., Local 3020;* H.D. Brown, Anderson, Solberg — 16 pages.

*Strathmere Lodge, Strathroy (Corporation of the County of Middlesex) & L.D.S.W.U., Local 220;* H.D. Brown, Coups, Krashinsky — 19 pages.





# Monthly Bulletin



Ontario Ministry of Labour



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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of April, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Applicability of provincial human rights legislation and provisions of Federal Charter of Rights and Freedoms arbitrable — estoppel not available if effect is to contract out of statutory regime governing human rights; alleged violation of continuing nature so time limits going only extent of remedy; grievance arbitrable. *Re Algonquin College & O.P.S.E.U.*; group grievance; April 24, 1985. Brent, Gallivan; dissent: Hennessey — 23 pages. (1)\*



Employer undertaking that correspondence to grievor not disciplinary — grievance not arbitrable. *Re C.M. Hincks Treatment Centre Inc. & O.P.S.E.U., Local 512; Braver-Irwin et al*, April 1985. Devlin, Mustard, Beaulieu — 8 pages. (2)

Referral to arbitration under s. 45 premature — neither had the grievance procedure been exhausted nor had fourteen days elapsed from time when grievance first brought to employer's attention; grievance not arbitrable. *Re Elective Management Services & Labourers, Local 183; Harris grievance*, April 9, 1985. Schiff — 9 pages. (3)†

### Bargaining Unit

Furniture moved by employees from outside bargaining unit — past practice not sufficient to establish furniture moving in office as bargaining unit work; grievance dismissed. *Re Sunar Hauserman Ltd. & U.S.W.A., Local 3292; group grievance*, April 9, 1985. Rayner — 8 pages. (4)

Replacement of registered nursing assistants with registered nurses — improper encroachment upon bargaining unit; grievance allowed. *Re Meadow Park Nursing Home, Chatham, & S.E.U.; J. Doidge grievance*, April 11, 1985. Hunter — 11 pages. (5)†

Temporary employees hired for seasonal work excepted from scope of bargaining unit — busy season extended by mild weather — insufficient evidence to establish that such employees worked more than 24 hours per week regardless of the season; grievance dismissed. *Re Metropolitan Toronto Zoological Society & C.U.P.E., Local 1600; policy grievance*, March 19, 1985. Wilson — 13 pages. (6)†

Transfer of supervisory personnel to bargaining unit limited to three persons per calendar year — limit applying to those supervisors who elect to return; grievance allowed. *Re Rio Algom Limited & U.S.W.A., Local 5980; policy grievance*, April 18, 1985. Saltman — 12 pages. (7)

### Call-in Pay

Service call-in — requirement to work full four hours after emergency service completed improper; grievance allowed. *Re V.S. Services Ltd. & Milk and Bread Drivers, Local 647; Sparrow grievance*, April 15, 1985. Hearn — 8 pages. (8)†

### Classification

Maintenance machining in metallurgical department — work falling within maintenance machinist classification; grievance dismissed. *Re Eldorado Resources Limited & U.S.W.A., Local 13173; Pemberton grievance*, April 4, 1985. Brent — 4 pages. (9)

### Contracting Out

Assembly, painting, testing and packaging work — no express prohibition; genuine contracting out; grievance dismissed. *Re Webster Air Equipment Ltd. & Int'l. Molders & Allied Workers, Local 49 (London); policy grievance*, April 19, 1985. Samuels — 5 pages. (10)

Bargaining unit so fully engaged in bargaining unit work that it could not perform tasks contracted out; grievance dismissed. *Re Boise Cascade Canada Ltd., Fort Frances Division & United Paperworkers Int'l., Local 92; union grievance*, April 4, 1985. Teplitsky — 4 pages. (11)

### Demotion

Probationary period provided — no notice of dissatisfaction with performance given within probationary period; grievance allowed. *Re Thunder Bay Corp. of City of & C.U.P.E., Local 87; Pogue grievance*, April 8, 1985. Solomatenko — 14 pages. (12)†

### Discharge

Absence without leave — bona fide, but incorrect belief of grievor irrelevant to requirement of finding reasons for absence satisfactory to employee; grievance dismissed. *Re Beacon Hill Lodges & S.E.U., Local 219; Davis grievance*, April 19, 1985. Fraser — 16 pages. (13)†

Absenteeism — employment record must reflect undue absenteeism and it must be demonstrated that the grievor is incapable of regular attendance in the future; grievance allowed. *Re Algoma Steel Corporation Ltd. (Tube Division) & U.S.W.A., Local 5595; Strachan grievance*, April 2, 1985. J. Devlin — 15 pages. (14)†

Absenteeism — grievor in breach of agreement that his continued employment conditional upon attendance not falling below the departmental average; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; Siminick grievance*, April 9, 1985. Brunner — 10 pages. (15)

Abuse of female employees — no mitigating factors; grievance dismissed. *Re P.C.L. Packaging Ltd. & E.C.W.U., Local 593; Klaffke grievance*, undated. Teplitsky — 3 pages. (16)

Alcoholism: continued abuse of alcohol by grievor after many attempts by employer to assist — post discharge behaviour not sufficient to mitigate penalty; grievance dismissed. *Re American Standard & Glass, Pottery, Plastics & Allied Workers, Local 231; Palmer grievance*, April 23, 1985. Betcherman, Byers, Knott — 5 pages. (17)

Assault upon fellow employee — repeated acts of aggression culminating in the striking of fellow employee with pop can; grievance dismissed. *Re St. Mary's Paper Inc. & Canadian Paperworkers; Rancourt grievance*, April 15, 1985. Majority: Hinnegan, Shields; dissent: Paxton — 15 pages. (18)

Assault upon supervisor — grounds for discharge in absence of 'significant mitigating circumstances'; grievance dismissed. *Re Beatrice Foods (Ontario) Ltd. & R.W.D.S.U., Local 440; Frendo-Cumbo grievance*, April 18, 1985. Hinnegan, Binning, Hall — 5 pages. (19)

Breach of trust alleged — no specific breach of employer rule or regulation; grievance allowed. *Re Toronto, Corp. of City of & C.U.P.E., Local 79; Delyon grievance*, April 3, 1985. Solomatenko — 25 pages. (20)†

Culminating incident — absence for three days — further substantiation of medical evidence not given until hearing — accepted by Company poor past record — reinstatement without compensation. *Re Apex Metals Kitchener Limited & U.A.W., Local 1524; Pape grievance*, April 3, 1985. Samuels — 4 pages. (21)

Culminating incident — reporting to work under influence of alcohol — poor past record despite progressive discipline; grievance denied. *Re Denison Mines Ltd. & U.S.W.A., Local 5762; Narlock grievance*, April 9, 1985. Swan — 19 pages. (22)

Culminating incident — previous grievance finalised such as to make prior suspension part of discipline record; grievance dismissed. *Re Welles Corp. Ltd. & U.A.W., Local 195; Gardiner grievance*, March 18, 1985. Raynor — 11 pages. (23)

Dishonesty: misrepresentation of work hours on time card — grievance dismissed. *Re Pamour Porcupine Mines Ltd. & U.S.W.A.; LeBrun grievance*, March 28, 1985. Davis — 12 pages. (24)†

Driving while license suspended — substitution of six-month suspension; grievor to be reinstated upon production of valid driver's licence. *Re Canada Post Corp. & Letter Carriers Union; Riley grievance*, April 8, 1985. E.B. Jolliffe — 49 pages. (25)

Duty of fidelity: outside work performed without authorization — outside work in direct competition with Company's services — long service employee — good past record — reinstatement with two-month suspension. *Re Canadian Broadcasting Corp. & C.U.P.E., Broadcast Division; Zaharuk grievance*, March 27, 1985. P.C. Picher — 45 pages. (26)

Fraud: deliberate and repeated attempt to deceive employer — long term employee; grievance dismissed. *Re Franklin Manufacturing (A Division of W.C.I. Manufacturing Ltd.), & I.A.M., Local 1246; Burgess grievance*, April 24, 1985. Majority: Devlin, Burnet; dissent: Solberg — 19 pages. (27)

Incompetence — culminating incident — need not be established where professional incompetence is basis for discipline; interim award. *Re Ottawa Civic Hospital & O.N.A.; L. Cody grievance*, January 21, 1985. Majority: Lunney, Mustard; dissent: Ballantyne — 74 pages. (28)

Insubordination and assault of supervisor alleged — no inquiry by management — suspect testimony; reinstatement without compensation. *Re Windsor Western Hospital Centre Inc. & S.E.U., Local 210; Dominas grievance*, April 24, 1985. Majority: McLaren, Solberg; dissent: Bartlet — 28 pages. (29)

Insubordination: failure to obey direct order of supervisor — no mitigating circumstances; grievance dismissed. *Re E.B. Eddy Forest Products Ltd. & Canadian Paperworkers, Locals 33, 34, 50 & 73; Chevrefils grievance*, April 22, 1985. Foisy — 9 pages. (30)†

Insubordination: failure to report to work on two separate occasions amounting to insubordination — no mitigating factors; grievance dismissed. *Re North American Plastics Co. Ltd. & U.A.W. Local 251; White grievance*, April 4, 1985. Rayner — 13 pages. (31)

Insubordination; refusal to perform work as directed out of fear of possible minor pain and discomfort — treated as willful insubordination; grievance dismissed. *Re National Auto Radiator Mfg. Co. Ltd. & U.A.W., Local 195; Boyer grievance*, March 28, 1985. O'Shea — 16 pages. (32)

Misleading workers' compensation claim — reinstatement without compensation. *Re Chrysler Canada Ltd. & U.A.W., Local 1285; Kapil grievance*, March 28, 1985. Kennedy — 28 pages. (33)

Negligence — failure to follow safety procedures for blasting in mine — safety campaign completed five days earlier — serious risk of injury to employees — poor past record — dismissal not unreasonable; grievance dismissed. *Re Inco Ltd. & U.S.W.A.; Bell grievance*, April 22, 1985. Majority: Simmons, Devlin; dissent: Aubot — 13 pages. (34)

Occasional teacher replaced by 'occasional' with better formal qualifications — not unreasonable — no breach of the agreement; grievance dismissed. *Re Toronto, Board of Education of the City of & O.P.S.E.U., Local 595; Conetta grievance*, March 25, 1985. Majority: Kruger, Light; dissent: Beaulieu — 15 pages. (35)

Patient abuse alleged — not established; errors in judgment made — no gross negligence nor callous indifference; no physical harm; reinstatement with two-month suspension. *Re Ottawa-Carleton, Regional Municipality of & C.U.P.E., Local 503; Pagayatan grievance*, April 3, 1985. Majority: Saltman, Robbins; dissent: Armstrong — 24 pages. (36)

Physical fitness to perform work — chronic back disability preventing performance of intrinsic part of work; grievance dismissed. *Re Parkwood Hospital and London & District Service Workers, Local 220; Naraine grievance*, April 1, 1985. Gorsky, Coups, McDonald — 8 pages. (37)

Possession of alcohol at work contrary to company work rules — mitigating factors; reinstatement without compensation. *Re Reed Decorative Products Ltd. & Canadian Paperworkers, Local 304; Page and McGillivray grievances*, February 18, 1985. Majority: Verity, Weisback; dissent: Mayer — 21 pages. (38)

Probationary employee — no evidence of bad faith; grievance dismissed. *Re York University & York University Staff Association; Sampson grievance*, April 19, 1985. Barton — 17 pages. (39)†

Procedure; lack of notice of discharge — remedy for lack of notice is damages; grievance allowed in part. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Ehler grievance*, April 25, 1985. Kennedy, Marshall, Tascona — 16 pages. (40)\*

Sabotage alleged — grievor not supplying credible explanation; poor past record; grievance dismissed. *Re Isabelle Brothers Ltd. & United Brotherhood of Carpenters and Joiners, Local 2995; Belanger grievance*, March 20, 1985. Majority: Lunney, Papineau; dissent: Fyshe — 14 pages. (41)†

Section 61(5) Canada Labour Code — employees recently promoted out of bargaining unit terminated as a result of Company reorganization; function disappeared; reinstatement denied. *Re Hudson Aviation Services Toronto Inc. & Arseneau, Baldwin, De Clou and Wilson; Labour Code 61(5)*, April 15, 1985. E.B. Jolliffe — 41 pages. (42)

Section 61.5 of the Canada Labour Code — quit not established; preparing resume after hours on Company typewriter insufficient to justify discharge; no complaint about complainant's performance at work brought to his attention; complaint allowed. *Re Guardian Van Lines Ltd. and Bedwell Van Lines Ltd. & Kim Jepson*, April 4, 1985. M.G. Picher — 13 pages. (43)

Theft of employer's property — corrective discipline would be ineffective and to reinstate would impose too great a burden of risk on employer; grievance dismissed. *Re Goodyear Tire Inc. & U.R.W., Local 232; Kennedy grievance*, April 11, 1985. Langille — 18 pages. (44)†

Theft of goods of nominal value — good record during thirteen years of employment; reinstatement without compensation. *Re Food City — Sudbury City Centre & R.W.D.S.U., Local 579; Ciutti grievance*, April 5, 1985. O'Shea — 10 pages. (45)

Theft of snow shovel belonging to employer — momentary aberration — isolated incident on record; fault admitted; hardship to grievor; substitution of one-month suspension allowed. *Re William Nielson Ltd. & U.F.C.W., Local 529P; Santos grievance*, April 4, 1985. Hearn — 15 pages. (46)†



**Discipline**

Absenteeism — no adequate explanation of absence given to characterize absence as innocent; grievance dismissed. *Re Trenton Memorial Hospital & O.N.A.; Hess grievance*, April 8, 1985. Betcherman — 7 pages. (47)†

Carelessness alleged — grievor mistakenly loaded his forklift truck with more material than it could safely handle — previous suspension on disciplinary record not established — suspension reduced from three days to one day. *Re Halltech Inc. & U.S.W.A., Local 8272; Drennan grievance*, April 4, 1985. Wilson — 9 pages. (48)†

Assault of fellow employee off company premises — sufficiently work related, but not proved that the event occurred; grievance allowed. *Re Westinghouse Canada Inc. & U.E., Local 504; Nangle grievance*, April 19, 1985. Majority: Weatherhill, Davidson; dissent: Kacur — 10 pages. (49)

Criminal charges — alleged illegal possession of drugs for trafficking occurring while using free or reduced air fare ticket — conduct not work-related; suspension improper. *Re Air Canada & C.A.L.E.A.; Mr. M. grievance*, April 3, 1985. Simmons — 8 pages. (50)

Negligent behaviour of employee — ten day suspension unwarranted for first offense; substitution of written warning. *Re Canadian Cannery & U.A.W., Local 580; Solomon grievance*, April 4, 1985. Teplitsky — 4 pages. (51)

**Education Allowance**

Failure to pay allowance upon successful completion of upgrading — grievance allowed. *Re U.L.S. Int'l. Inc. and Ranex Shipping & Canadian Brotherhood of Railway, Transport and General Workers; Monroe grievance*, April 10, 1985. Teplitsky — 4 pages. (52)

**Evidence**

Computer printout of records kept in the ordinary course of business — admissible as an exception to the Hearsay Rule; interim award. *Re Zehrs Markets, a Division of Zehrmart Ltd. & Retail Clerk Union, Local 1977; policy grievance and Carson, Taylor grievances*, March 29, 1985. Weatherhill — 7 pages. (53)†

Unresolved grievances concerning two previous suspensions — arbitrator may consider whether misconduct relevant to determining appropriateness of discharge. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; Chrisikopoulos grievance*, April 12, 1985. Solomatenko — 16 pages. (54)†

**Grievance Procedure**

Policy grievance inappropriate where allegation is that employer has violated collective agreement through continued temporary reassignment of employees — grievance not arbitrable. *Re McDonnell Douglas Canada Limited & U.A.W., Local 1967; policy grievance*, April 9, 1985. Barton — 5 pages. (55)†

**Health Insurance Plans**

Employer's obligation to pay premiums subject to eligibility requirements of provincial plan pursuant to provincial legislation — eligibility requirement not constituting prohibited discrimination — alleged violation of Charter of Rights and Freedoms by statutory provision relating to health insurance not arbitrable. *Re Algonquin College & O.P.S.E.U., group grievance*; see (1) *supra*. (56)\*

**Holiday Pay**

Calculation — "time and one-half" daily tour rate inclusive of twelve percent payment in lieu of fringe benefits; grievance allowed. *Re John Noble Home for the Aged & O.N.A.; group grievance*, March 19, 1985. P.C. Picher, Brillinger, Switzman — 11 pages. (57)

Entitlement — grievor cannot be deprived of right to holiday pay by employer unilaterally imposing a policy of qualifying days; grievance allowed. *Re Lambton, Corp. of County of & C.U.P.E. Local 2557; Lawson grievance*, April 2, 1985. Welling — 7 pages. (58)†

Probationary employees — employer only paying holiday pay if employee worked thirty days immediately prior to holiday; grievance allowed. *Re The Wallace Barnes Co. Ltd. & U.S.W.A., Local 8761; policy grievance*, April 11, 1985. O'Shea — 7 pages. (59)

**Interpretation**

Effect of settlement of previous grievance relating to same provision — settlement binding; grievance allowed. *Re Elgin Manor Home for the Aged & London and District Service Workers, Local 220; policy grievance No. 16*, March 25, 1985. Swan, Hyde, Robbins — 12 pages. (60)

Settlement of grievance about bumping rights worded to require employer to place grievor in the position sought — assignment ordered with compensation; grievance allowed. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; McKinnon grievance*, April 2, 1985. Kruger — 10 pages. (61)†

**Job Evaluation**

Rate of pay — no significant change made to grievor's job description so as to justify arbitral review of wage rate; grievance dismissed. *Re Thunder Bay, Corp. of City of & C.U.P.E. Local 87; Patridge grievance*, April 23, 1985. Solomatenko — 10 pages. (62)

**Job Posting**

Existence of new job — new assignments added to job; grievance allowed. *Re American Can Canada Inc. & Can Workers' Union, Local 354; union grievance*, February 8, 1985. Weatherhill, Fraser, Whyte — 17 pages. (63)

**Job Vacancy**

Existence of vacancy; redundant employee seeking re-assignment to position alleged available — budgetary cutbacks justifying decision to abolish vacancy previously existing in classification; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; McEwan grievance*, April 4, 1985. M.G. Picher — 34 pages. (64)

Full-time vacancy — insufficient volume of work to evidence vacancy for full-time position of cashier; but vacancy in bakery department ought to have been filled by part-time employee who had given written notice of wanting full-time work; grievance allowed in part. *Re Canada Safeway Ltd. & U.F.C.W., Local 409; group grievance*, March 18, 1985. Phillips — 5 pages. (65)†

**Lay-Off**

Bumping rights; right to revert to former classification — right to revert not qualified by prohibition against successful bidder from bidding on subsequent job posting for periods of six months; grievance allowed. *Re Canadian General-Tower Ltd. & United Rubber Workers, Local 292; Silveira, Muller grievances*, April 15, 1985. Solomatenko — 8 pages. (66)†

Compensation flowing from improper lay-off — grievor's capability to do work sought unchallenged — lay-off sporadic — no evidence that irregular employment opportunities available; not unreasonable that grievor did not seek employment; conditional payment of interest; supplementary award. *Re Whitby Boat Works Ltd. & United Brotherhood of Carpenters and Joiners, Local 2679; Brunner grievance*, April 9, 1985. Brent — 11 pages. (67)

Qualifications; five-day lay-off — reasonableness of familiarization period related to length of lay-off; grievance dismissed. *Re Reed Decorative Products Ltd. (Sunworthy Wall Coverings) & Canadian Paperworkers, Local 304; Bilodeau grievance*, April 16, 1985. Majority: Brent, Mayer; dissent: Weisbach — 9 pages. (68)

Quantum of compensation for improper lay-off — employer to pay fifty percent of compensation owing for the entire period of grievor's wrongful lay-off; supplementary award. *Re House of Braemore & Upholsterers' International Union, Allamby grievance*, March 28, 1985. Majority: P.C. Picher, Earle; dissent: Sanders — 7 pages. (69)

Temporary partial lay-off of sole member of bargaining unit — no notice required; grievance dismissed. *Re Civic Employees' Union, Local 43 & O.P.E.I.U., Local 343; Sky grievance*, April 17, 1985. Barrett — 4 pages. (70)†

#### Leave of Absence

Sick pay claimed by grievor — unpaid leave never requested by grievor; grievance allowed. *Re Wellesley Hospital & O.N.A.; L'Heureux grievance*, April 12, 1985. Majority: Brent, Beaulieu; dissent: Weir — 18 pages. (71)

#### Management Rights

Employer rule; smoking prohibited on premises — not discriminatory nor unreasonable; purpose and effect to protect health of patients; grievance denied. *Re Plainfield Childrens' Home & S.E.U., Local 183; policy grievance*, March 25, 1985. G. England — 16 pages. (72)\*†

Personal appearance rule — not inconsistent with *Police Act*; grievance dismissed. *Re Waterloo Regional Board of Commissioners of Police & Waterloo Regional Police Assoc.; Hapiavouri grievance*, April 2, 1985. MacDowell — 13 pages. (73)

Promotion policy falling within management's right to establish qualifications and standards for work and to require tests to establish qualification — no representation made that promotion policy not affecting automatic progression would not be developed; grievance dismissed. *Re North Bay, City of & North Bay Professional Firefighters Assoc., Local 284; policy grievance*, March 29, 1985. Burkett — 17 pages. (74)

Visitation plan for all employees on sick leave — filing of certificate for sick leave not a complete code for monitoring absenteeism — no violation of privacy; grievance dismissed. *Re Windsor, Corp. of City of & O.N.A.; M. Giofu & Policy grievance*, April 17, 1985. Majority: McLaren, Kavanaugh; dissent: Robbins — 40 pages. (75)\*

#### Maternity Leave

Policy of requiring unpaid maternity leave four weeks prior to birth — policy questionable, but proper allocation between sick leave and maternity leave; grievance dismissed. *Re Metropolitan General Hospital & O.N.A.; Goldstein grievance*, April 12, 1985. Majority: Swan, Burnell; dissent: Robbins — 20 pages. (76)\*

#### Overtime

Entitlement — concurrent premium payments for shift differential and overtime not precluded by collective agreement for same hours worked; grievance allowed. *Re Domglas Ltd. & United Glass and Ceramic Workers, Local 203; S. Duncan grievance*, April 9, 1985. Howe — 12 pages. (77)

#### Pensions

Meaning of 'pension credit' — rate reduction for hospital does not constitute a pension credit within meaning of agreement. *Re Peterborough Civic Hospital & O.P.S.E.U.; Mitchell grievance*, April 22, 1985. Majority: Burkett, Winkler; dissent: Solberg — 13 pages. (78)

#### Premium Pay

Hours worked during regularly scheduled shift — failure to pay overtime premium on hours worked in excess of eight in preceding twenty-four hour period; grievance allowed. *Re Firestone Canada & United Rubber Workers, Local 113; policy grievance*, April 10, 1985. Majority: Burkett, Robbins; dissent: Johnson — 15 pages. (79)

Relief Pay — trainees performing work regularly performed by trained incumbents — not entitled to relief pay; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Local 1000; policy grievance*, March 29, 1985. Majority: Kates, McHenry; dissent: Vincer — 14 pages. (80)

#### Procedure

Adjournment — hearing of discharge grievance to be adjourned pending outcome of arbitration of three prior incidents giving rise to discipline, adjournment sine die granted. *Re St. Mary's Hospital and London and District Service Workers' Union, Local 220; Borshell grievance*, March 29, 1985. Hunter — 6 pages. (81)†

#### Promotion

Qualifications — grievor establishing sufficient knowledge of duties and responsibilities of position notwithstanding lack of requisite level of formal education; grievance allowed. *Re Ontario Hydro & C.U.P.E., Local 1000; Flenniken grievance*, March 28, 1985. Majority: Adams, Vincer; dissent: Abbott — 22 pages. (82)

Qualifications — grievor not capable of acquiring requisite skill in appropriate familiarization period; grievance dismissed. *Re Norfolk Hospital Assoc. & O.N.A.; Greincevicius grievance*, April 12, 1985. Majority: Kennedy, Plauntz; dissent: Symes — 17 pages. (83)

Qualifications: hybrid clause — employee required to make a full inquiry into the qualifications of applicants for a position; grievance allowed in part. *Re Port Elgin, Corp. of Town of & I.U.O.E., Local 793; Cooke grievance*, April 10, 1985. Barton — 11 pages. (84)†

Qualifications: physical disability — employer incorrectly assessing safety risk; grievance allowed. *Re Imperial Clevite Inc. Mechanical Products Division & I.A.M., Local 1975; Brown grievance*, April 19, 1985. Majority: Brown, Solberg; dissent: Storie — 21 pages. (85)\*

Non-competitive seniority provision — senior employees entitled to consideration notwithstanding substandard performance in the past; employer must act honestly and without discrimination; grievance allowed. *Re Eastern Steel Casting, a Division of Ivaco Inc. & U.S.W.A., Local 8794; Robinson grievance*, April 16, 1985. Pyle — 16 pages. (86)†



**Recall**

Vacancy alleged to exist because of series of temporary assignments — not established; grievance dismissed. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; policy grievance*, March 26, 1985. Black — 12 pages. (87)†

**Reporting Pay**

Lack of supervision available because of winter storm alleged to be 'circumstance beyond the control of employer' — responsibility of employer to provide supervision — no evidence of lack of supervisory personnel; grievance allowed. *Re General Coach, a Division of Citair Inc. & United Brotherhood of Carpenters and Joiners, Local 3054; policy grievance*, April 12, 1985. Hunter — 11 pages. (88)†

**Retirement**

Calculation of retirement gratuity — to be calculated on basis of the teachers' salaries on the grid for the latest year prior to termination of employment subject to a limitation based on earnings actually received; grievance allowed. *Re Brant County Board of Education & O.S.S.T.F. District 5; policy grievance*, April 24, 1985. Majority: Brown, McNeil; dissent: McCleery — 18 pages. (89)

Compulsory retirement at age sixty-five — policy applied on a case-by-case basis; company acted in good faith; grievance dismissed. *Re Canada Wire and Cable & U.S.W.A., Local 7608; Korcsmaros grievance*, April 10, 1985. O'Shea — 13 pages. (90)

**Safety Equipment**

Allowance for purchase of safety boots — entitled to full allowance notwithstanding actual cost; grievance allowed. *Re Holmes Foundry, a Division of American Motors (Canada) & U.A.W., Local 456; Lapier grievance*, March 29, 1985. Verity — 7 pages. (91)

**Scheduling of Work**

Conversion to four-crew, seven-day per week operation for maintenance personnel from a three-crew, five-day per week operation with voluntary coverage on weekends justified by reasons of efficiency and practicality — in accordance with terms of joint agreement and letter of understanding; grievance dismissed. *Re Firestone Canada Inc. & United Rubber Workers, Local 113; policy grievance*, April 25, 1985. McLaren — 27 pages. (92)

**Seniority**

Calculation for full-time unit — calculated from commencement of employment in bargaining unit; grievance allowed in part. *Re St. Joseph's Villa & C.U.P.E., Local 2717; Andrews grievance*, April 19, 1985. Frankel — 15 pages. (93)†

Calculation where previously excluded from bargaining unit because of confidential position — presumption in favour of individual rights; grievance dismissed. *Re The Eastern Ontario Health Unit & C.U.P.E., Local 1997; policy grievance*, April 3, 1985. Pyle — 12 pages. (94)†

**Sick Pay**

Calculation of entitlement based on years of 'continuous service' — in absence of express provision must include both part-time and full-time; grievance allowed. *Re Welland County Hospital & O.N.A.; Samure grievance*, April 17, 1985. Rose — 17 pages. (95)†

Entitlement — grievor entitled to draw sick leave credits only during waiting period for application for benefits under wage indemnity plan; grievance dismissed. *Re Air Canada & C.A.L.F.A.; policy grievance*, April 25, 1985. Brown — 20 pages. (96)

Short-term disability benefits — "days" referring to working days and not calendar days; grievance dismissed. *Re International Paints (Canada) Limited, Ontario Division & U.S.W.A., Local 14209; policy grievance*, April 18, 1985. Kennedy, Phelps, Nicol — 9 pages. (97)\*

**Transfer**

Extent of employer's right to transfer — no express limitation on management right to transfer employees; grievance dismissed. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; union grievance*, April 11, 1985. Hinnegan — 10 pages. (98)†

**Travel Allowance**

Rental of vehicle on temporary basis — employer's authorization not established; grievance dismissed. *Re O.P.S.E.U. & Ontario Public Service Staff Union; Luczay grievance*, April 19, 1985. Swan — 6 pages. (99)

**Union Officials**

Obligation to support settlement agreement — no implied obligation to refrain from seeking change; employer grievance dismissed. *Re Renfrew, Corp. of the County of & C.U.P.E., Local 1508; employer grievance*, April 12, 1985. Thorne — 18 pages. (100)†

**Union Rights**

Wearing of union pins — lawful as an exercise of right to engage in lawful union activity; grievance allowed. *Re Air Canada & C.A.L.E.A.; union grievance*, April 15, 1985. Brent — 12 pages. (101)\*

**Union Security**

Applicability of check-off where temporary or acting assignment in another bargaining unit — no obligation on employer to remit dues; grievance dismissed. *Re Canada Post Corporation and Assoc. of Postal Officials et al., Letter Carriers' Union; policy grievance*, April 19, 1985. Kates — 30 pages. (102)

Remittance of dues — insufficient evidence adduced to prove that dues not deducted nor forwarded to union; grievance dismissed. *Re Robertson-Whitehouse & U.S.W.A., Local 4970; union grievance*, April 4, 1985. Hearn — 6 pages. (103)†

**Vacations**

Calculation of entitlement — provisions of agreement effective June 25, 1984 not affecting vesting of vacation rights effective April 30, 1984; grievance dismissed. *Re Humpty Dumpty Foods Ltd. & Retail, Wholesale, Bakery and Confectionery Workers, Local 461; union grievance*, April 11, 1985. Majority: Weatherhill, McComb; dissent: Reekie — 10 pages. (104)

Pregnancy leave — not included in service required for vacation entitlements; no explicit exclusion of pregnancy, but included in leave without pay; grievance dismissed. *Re C.I.L. Inc., Brampton Works & E.C.W.U., Local 698; Stiles grievance*, April 10, 1985. Foisy — 12 pages. (105)†

**Vacation Pay**

Calculation to be based on straight time wages and earned benefits — continuing breach, but relief to be limited by time limit. *Re St. Raphael's Nursing Home Ltd. & London and District Service Workers' Union, Local 220; group grievance*, March 28, 1985. R.J. Roberts — 9 pages. (106)\*†

Entitlement while on leave — continuation of superior predecessor agreement entitling grievor to vacation pay for time on leave; grievance allowed. *Re Sudbury Algoma Hospital & O.N.A.; Doyle grievance*, April 11, 1985. Boscariol — 9 pages. (107)†

Time of payment — employer entitled to change time for payment; grievance dismissed. *Re Brampton Hydro-Electric Commission & I.U.E. Local 636; union grievance*, April 12, 1985. Devlin — 7 pages. (108)

**Wages**

Allowance for attendance at compulsory safety seminar — amount unilaterally determined by employer not in accord with collective agreement; grievance allowed. *Re Travelways School Transit Ltd. & Canadian Brotherhood of Railway, Transport and General Workers; policy grievance*, March 26, 1985. Knopf — 9 pages. (109)†

Effect of *Inflation Restraint Act* — wage payments in excess of 5% pursuant to 5.12(2) of *Inflation Restraint Act* to be reflected in wages rates in calculation of vacation pay and not treated as bonus; grievance allowed. *Re Renfrew County and the City of Pembroke & O.P.S.E.U.; policy grievance*, April 12, 1985. Majority: Samuels, Beaulieu; dissent: Dickenson — 12 pages. (110)

Student rate — employer obligated to change rate of pay from student rate to part-time rate when it continued to employ the grievor after she informed it that she had quit school; grievance allowed. *Re F.W. Woolworth Co. Ltd. & U.F.C.W., Local 409; Gosnell grievance*, March 18, 1985. Phillips — 3 pages. (111)†

**Welfare Plans**

Obligation to continue payment of premiums for those absent from work owing to injury or infirmity — grievors continue as employees notwithstanding absence — premiums payable by employer; grievances allowed. *Re Modular Windows of Canada Ltd. & U.S.W.A., Local 2729; Blanas, Singh, Huacon grievances*, April 26, 1985. Kirkwood — 9 pages. (112)†

Probationary employees; entitlement under group insurance program — not including periods of lay-off in determining waiting period; grievance allowed in part. *Re Wallace Barnes Co. Ltd. & U.S.W.A., Local 8761; policy grievance*, April 10, 1985. O'Shea — 17 pages. (113)

**Work Assignment**

Caretakers taking measurements for replacement glass — more closely related to a maintenance function than merely a reporting function — not related to core duties of job classification; grievance allowed. *Re Ottawa Roman Catholic Separate School Board & S.E.U., Local 272; union grievance*, March 22, 1985. Majority: Foisy, Dunn; dissent: Leblanc — 22 pages. (114)

Foreman performing excessive amount of bargaining unit work — grievance allowed. *Re Beer Precast Concrete Ltd. & Labourers' International, Local 506; union grievance*, February 14, 1985. Majority: Dunn, Nairn; dissent: MacDermid — 8 pages. (115)

Qualifications — employees junior to grievor not able to perform satisfactorily the work required on robotic equipment; grievance dismissed. *Re T.R.W. Canada Ltd. & U.A.W., Local 397; Miller grievance*, April 29, 1985. Weatherill — 7 pages. (116)

Reorganization eliminating grievor's position by transferring work to supervisory personnel — improper assignment; job function to be returned to bargaining unit. *Re Falconbridge Ltd. & Sudbury, Mine, Mill and Smelter Workers' Union, Local 598; individual grievance*, April 19, 1985. Majority: Betcherman, O'Neil; dissent: Valin — 10 pages. (117)

Reorganization and elimination of third cook position in galley — self-serve cafeteria introduced for reasons of business efficiency — requisite consultation with Union effected; grievance dismissed. *Re U.L.S. International Inc. & Canadian Brotherhood of Railway Transport and General Workers, Local 401; union grievance*, April 3, 1985. Brown — 18 pages. (118)

Unilateral reassignment of portion of job content of a classification — established past practice that such change to be negotiated; grievance allowed. *Re Windsor, City of & C.U.P.E., Local 82; policy grievance*, April 8, 1985. Majority: Barton, Jones; dissent: Nesselth — 13 pages. (119)

**Welfare Plans**

Coverage of dependants — dependant student over 21 years of age covered for dental expenses; grievance allowed. *Re Firestone Canada Inc. (Hamilton Plant) & United Rubber Workers, Local 113; Mahler grievance*, April 26, 1985. Majority: Devlin, Switzman; dissent: Johnson — 22 pages. (120)

**Construction Industry Arbitration — Ontario Labour Relations Board**

The following awards were filed with the Office of Arbitration during the month of July, 1985.

**Collection**

Wages, vacation and statutory holiday pay and benefit contributions — order to pay issued. *Re Amphitron Construction Ltd. & United Brotherhood of Carpenters & Joiners, Local 1190; Cullman grievance*, June 28, 1985. Howe, Grant, Armstrong — 3 pages. (121)

**Discharge**

Union official led other employees out on unlawful strike — grievor not credible at hearing; grievance dismissed. *Re Bird Construction Co. Ltd. & Labourers, Local 1036; Dauphin grievance*, June 17, 1985. Franks, Wilson, Kobryn — 3 pages. (122)

**Procedure**

Sufficient particulars of violations alleged as to make grievance arbitrable and to enable compliance with subpoena duces tecum; interim award. *Re Karl Thier Construction Ltd. and Penka Carpentry Ltd. & United Brotherhood of Carpenters and Joiners, Local 1190; union grievance*, June 11, 1985. Freedman, Murray, O'Flynn — 4 pages. (123)



### Wages

Employer not entitled to withhold final payment of wages in partial satisfaction of an alleged overpayment of room and board allowance — *Employment Standards Act*, s. 8; grievance allowed. *Re The Electrical Power Systems Construction Assoc. and Ontario Hydro & United Assoc. of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 527*; union grievance, June 27, 1985. MacDowell, Wightman, O'Flynn — 7 pages. (124) O'Flynn — 7 pages. (124)

### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of July, 1985.

*Chapleau Senior Services Inc. & C.U.P.E., Local 2341*; Brunner, Sheridan, Pharand — 11 pages.

*Fairvern Nursing Home (Vernon Nursing Home Services Ltd.) & O.N.A.*; Majority: V.E. Scott, Mayne; addendum: Mayne; dissent: Mustard — 23 pages.

*Queensway-Carleton Hospital & Assoc. of Allied Health Professionals: Ontario*; Majority: Barton, Mustard; addendum: Mustard; dissent: McKellar — 34 pages.

*West Park Hospital & S.E.I.U., Local 204*; Kates, Mustard, Solberg; addendum: Solberg — 10 pages.

*Victoria Hospital Corp. & London and District Service Workers, Local 220*; Brown, Lewis, Filion — 11 pages.

*Lyndhurst Hospital & S.E.U., Local 204*; Burkett, Solberg, Bass — 10 pages.

*St. Mary's General Hospital & London and District Service Workers, Local 220*; Majority: Swan, Switzman; dissent: Cook; addendum: Swan — 43 pages.

*St. Thomas-Elgin General Hospital & London and District Service Workers*; supplemental award & collective agreement (full time); Brown, Lewis, Filion — 56 pages.

*Sunnyside Home for Aged (Regional Municipality of Waterloo) & O.N.A.*; Ord; partial dissent: Hyde; dissent: Mayne — 26 pages.

*Ottawa Regional Hospital Linen Services Inc. & Textile Processors, Service Trades, Health Care, Professional and Technical Employees, Local 351*; Black, Churchmuch, McIntyre; addendum: McIntyre — 23 pages.

*Scarborough General Hospital & O.P.S.E.U., Local 581*; interim award; Saltman, Sanderson, Beaulieu — 3 pages.

*Thunder Bay Homes for the Aged & S.E.U., Local 268*; Majority: McLaren, Solberg; partial dissent: Holt — 28 pages.

*Mapleton Manor Nursing Home (C.H.P. Developments Limited) & H.O.P.E., Local 206*; Majority: Baum, Robbins; dissent: Addario — 28 pages.

*Participating Hospitals & O.P.S.E.U. and its Participating Locals*; supplementary award; O'Shea, Winkler, Lewis — 4 pages.

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Publications

# Monthly Bulletin



Ontario Ministry of Labour



Ontario

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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of May, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Casual employee from list of available workers — not arbitrable as a discharge; grievance dismissed. *Re Four Seasons Hotel Toronto (Four Seasons Yorkville) & Textile Processors, Service Trades, Health Care, Professional and Technical Employees, Local 351; Mazomenos grievance, May 14, 1985. Hinnegan — 6 pages. (1)*

Change in production method alleged to trigger change in pay scale — parties to meet and agree to any such change — no provision for failure to agree; grievance not arbitrable. *Re Storwall International Inc. & U.S.W.A., Local 3257; policy grievance, April 27, 1985. Carrothers — 9 pages. (2)†*



Delay alleged — delay may effect remedy but not jurisdiction of arbitrator to hear merits; interim award. *Re The Maritime Employees Association on behalf of its members, the Shipping Federation of Canada Inc. & International Longshoreman's Association, Local 1842; policy grievance*, May 15, 1985. Brent — 7 pages. (3)

Discharge of probationary employee — no right to grieve; grievance dismissed. *Re Riverside Hospital of Ottawa & C.U.O.E.; Raine grievance*, May 6, 1985. Pyle — 21 pages. (4)†

Job evaluation — arbitration only available in situation of new or changed classification not mistakes; grievance denied. *Re Toronto, Corporation of City of & C.U.P.E., Local 79; policy grievance*, May 24, 1985. Kates — 16 pages. (5)

Privacy: camera surveillance — right to privacy an implicit term of collective agreement; grievance arbitrable. *Re Dempsters Bread & Milk and Bread Drivers, Local 647; policy grievance*, April 29, 1985. Wilson — 8 pages. (6)†

Termination of probationary employee — collective agreement preventing arbitrability of grievance; grievance dismissed. *Re Highland Beverages Limited & Canadian Union of Brewery Workers; Graham grievance*, May 23, 1985. Weatherill — 10 pages. (7)

Timeliness of referral under s. 45 — clock does not begin to run until grievance filed in writing; grievance not arbitrable. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; union grievance*, April 29, 1985. Joyce — 13 pages. (8)†

Timeliness of reference under s. 45 — grievance procedure not exhausted; failure to have second meeting as required decisive as provisions of s. 45(2) Ontario Labour Relations Act mandatory; grievance denied. *Re Greenbank I.G.A. & U.F.C.W., Local 486; Rogers grievance*, May 13, 1985. Fraser — 12 pages. (9)†

Timeliness of referral under s. 45 — outside time limits; grievance dismissed. *Re The Wallace Barnes Company Ltd. & U.S.W.A., Local 8761; policy grievance*, May 9, 1985. O'Shea — 15 pages. (10)†

Workload assignments — specialized grievance procedure exhausted; issue arbitrable. *Re Algonquin College & O.P.S.E.U.; union grievance*, May 24, 1985. Majority: Brent, Hunter; dissent: Pirrie — 11 pages. (11)

### Bargaining Unit

Infection control nurse — acting in nursing capacity; duties of incumbent recognized as nursing by College of Nurses; grievance allowed. *Re St. Joseph's Hospital, Guelph & O.N.A.; policy grievance*, May 15, 1985. Majority: Brent, McIntyre; dissent: Filion — 18 pages. (12)

Research and development chemists — research positions have never been included in unit; grievance denied. *Re Nacan Products Ltd. Toronto & E.C.W.U., Local 189; policy grievance*, May 24, 1985. Adams — 14 pages. (13)

### Board of Arbitration

Jurisdiction to apply estoppel — estoppel can only be divorced from arbitral process by the clearest of language of the courts; grievance denied. *Re Canada Safeway Limited & Retail, Commercial and Industrial Union, Local 206; policy grievance*, August 24, 1985. Majority: Palmer, Storie; dissent: Rudrum — 10 pages. (14)

### Call-in Pay

Assignment of duties other than those for which employee originally called in — request for overtime on previous day sufficiently general; no entitlement to additional payment of call-in pay. *Re Federal White Cement Ltd. & United Cement, Lime, Gypsum and Allied Workers' Division of International Brotherhood of Boilermakers Union, Local D589; Martin grievance*, May 7, 1985. Barton — 8 pages. (15)†

Entitlement; union alleging that grievor should have been called in to do work performed by other employees — tasks of relatively simple nature requiring none of the skills of grievor's classification; grievance denied. *Re Eldorado Nuclear Limited & U.S.W.A., Local 13173; Balsillie grievance*, May 14, 1985. Palmer — 5 pages. (16)

### Classification

Different job assigned — no right to transfer job duties between classifications; grievance allowed. *Re Kelsey-Hayes Canada Ltd., Eureka Foundry Plant Woodstock Div. & U.A.W., Local 636; Malthy grievance*, April 25, 1985. R.J. Roberts — 10 pages. (17)

Failure to negotiate rate wrong for "casual general labourer" — amounting to incorrect classification; grievance allowed in part. *Re The National Arts Centre Corporation & Public Service Alliance of Canada; Gaetano, Diraimo grievances*, May 24, 1985. Kates — 11 pages. (18)

### Collective Agreement

Effect of work sharing agreement — not an amendment but unfair to now allow union to rely on strict terms of collective agreement; grievance dismissed. *Re St. Mary's Cement Company & United Cement, Lime and Gypsum Workers International Union, Local 568; Fry and Clough grievances*, May 3, 1985. Davis — 7 pages. (19)†

Letter of understanding contradicting terms of agreement — while not part of agreement giving rise to an estoppel; grievance allowed. *Re Innisfil, Board of Commissioners of Police for the Township of & Innisfil Police Association; policy grievance*, May 9, 1985. Hinnegan — 10 pages. (20)\*

Retroactivity of wage increase — collective agreement clear on its face; increase effective on receipt of ratification letter from union; grievance dismissed. *Re Chealsea Inn, Hampton Court Hotel, Westin Hotel, Inn on the Park, Loews Westbury, Prince Hotel, Ramada Inn (Don Valley), Ramada Inn (Downtown), Sheraton Centre, Hotel Plaza II & Hotel Employees, Restaurant Employees Union, Local 75; union grievance*, May 7, 1985. Majority: Adams McDermott; dissent: Cavalluzzo — 27 pages. (21)

### Contracting Out

Casual relationship between lay-off and contracting out — dependent upon whether reduction of pool of available positions within location. *Re Canadian Broadcasting Corporation & C.U.P.E.; policy grievance*, May 6, 1985. M. Picher — 32 pages. (22)

Driving of bus — not performed 'on the limits and work sites of the Company'; grievance denied. *Re Abitibi-Price Inc. & Lumber and Sawmill Workers Union; Local 2693 of the United Brotherhood of Carpenters and Joiners; policy grievance*, August 20, 1985. Majority: Palmer, Brady; dissent: Davidson — 9 pages. (23)

Trucking fleet sold — bona-fide business reasons; grievance denied. *Re American Can Canada Inc. & U.S.W.A., Local 8995; union grievance*, May 2, 1985. O'Shea — 10 pages. (24)

**Damages**

Interest at the average annual prime rate awarded on the retroactive increase in the percentage in lieu of benefits as found in the original award — interest payable from date of issue of original award; supplementary award. *Re 132 Participating Hospitals & O.N.A.; group grievance*, May 16, 1985. Majority: Saltman, Paliare; dissent: Winkler — 11 pages. (25)

Interest — may be awarded against Crown Corporation since broad remedial authority granted by collective agreement and applicable statute ousts immunity claimed; supplementary award. *Re Canada Post Corporation & C.U.P.W.; O'Brien grievance*, February 20, 1985. Swan — 29 pages. (26)\*

Mitigation — employer alleged that grievor failed to mitigate and this fact should be taken into account in compensation — not established. *Re Taggart Services Ltd. & Progressive Motor Transport Employees' Association; Stratton grievance*, May 22, 1985. M. Picher — 16 pages. (27)

Unemployment Insurance — employer entitled to remit repayment of benefits received by grievor to Receiver General; supplementary award. *Re Canada Post Corporation & C.U.P.W.; O'Brien grievance*. See (26), *supra*. (28)

Unjust discharge — calculation of compensation. *Re Provost Cartage Inc. & E.C.W.U., Local 141; Chisholm grievance*, May 24, 1985. Hinnegan — 7 pages. (29)

**Demotion**

Failure to meet production standards alleged — unfair application of standards; grievance allowed. *Re Pakfold Business Forms & Printing and Graphic Communications Union; Salfi grievance*, May 15, 1985. McKechnie, Byers, Solberg — 18 pages. (30)

Four driving accidents — three of a minor nature and final incident not fault of grievor; grievance allowed. *Re Kelsey-Hayes Canada Ltd. & U.A.W., Local 636; Ludlow grievance*, November 30, 1984. Palmer — 6 pages. (31)

**Discharge**

Absence without reason — satisfactory reason not established; grievance dismissed. *Re Etobicoke, Corporation of the City of & The City of Etobicoke Civic Employees, Local Union No. 185; Lavin grievance*, May 7, 1985. Devlin — 14 pages. (32)

Absenteeism due to alcoholism — grievor dropping out of alcoholism treatment programme and continuing to drink — no basis to conclude grievor capable of regular attendance in future; grievance dismissed. *Re K-Mart Canada Limited & Teamsters, Local 419; Verner grievance*, May 17, 1985. Majority: Saltman, Brisbin; dissent: Fraser — 13 pages. (33)

Absenteeism: employee placed on probation — discharge after first late not justified as defeats the purpose of probationary period; grievance allowed in part. *Re Holmes Foundry, a Division of American Motors (Canada) Inc. & U.A.W., Local 456; Hicknell grievance*, May 13, 1985. Hinnegan — 9 pages. (34)

Absenteeism — extenuating circumstances including fact of single parentage; grievance allowed. *Re Multi-Fittings Ltd. & International Molders and Allied Workers Local 49; O'Dwyer grievance*, October 11, 1984. Palmer — 9 pages. (35)\*

Absenteeism — grievor alleged absences the result of now controlled alcoholism; reinstatement without compensation. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; Lebreton grievance*, April 15, 1985. Palmer — 6 pages. (36)

Absenteeism — grievor on notice that his absenteeism record unsatisfactory — medical evidence not establishing future prospect of regular attendance; grievance dismissed. *Re Scarborough Centenary Hospital & C.U.P.E., Local 1320; James grievance*, April 30, 1985. Burkett — 16 pages. (37)

Absenteeism — no prognosis of future absenteeism; grievor failed to co-operate with the company; discharge excessive; probation period substituted; grievance allowed in part. *Re Inco Limited & U.S.W.A.; Lodge grievance*, May 3, 1985. Majority: Weatherill, Donnelly; dissent: Aubut — 12 pages. (38)

Absenteeism — work related back injury; absences likely to continue; grievance dismissed. *Re MacDonalds Consolidated Ltd. & Teamsters Local 419; Sturge grievance*, May 2, 1985. Majority: Hunter, Storie; dissent: Fraser — 24 pages. (39)

Absenteeism caused by grievor's alcoholism — mitigating circumstances; conditional reinstatement without compensation. *Re National Auto Radiator Manufacturing Company Ltd. & U.A.W., Local 195; Basque grievance*, November 15, 1984. Palmer — 5 pages. (40)

Assault upon supervisor — no mitigating circumstances; grievance denied. *Re Torcad Ltd. & U.S.W.A., Local 8841; Smith grievance*, May 23, 1985. Brunner — 12 pages. (41)

Availability for work — casual, part-time nurse; analogous to innocent absenteeism; grievance allowed in part. *Re St. Joseph's Hospital & O.N.A.; Stilson grievance*, May 22, 1985. Majority: M. Picher, Switzman; dissent: Mustard — 18 pages. (42)\*

Criminal convictions — exemplary employee sentenced to one year and six months concurrently — mitigating factors; reinstatement without compensation. *Re General Motors of Canada Ltd., Oshawa, Ontario & U.A.W., Local 222; Gionet grievance*, July 4, 1984. Palmer — 7 pages. (43)

Culminating incident — union alleged that only record to which reference can be made is record of similar or related offence; grievance allowed. *Re Brewers' Warehousing Company Ltd. & United Brewers' Warehousing Workers' Provincial Board; March grievance*, July 26, 1985. Palmer — 11 pages. (44)

Dishonesty — filing of false expense report — mitigating factors; substitution of six months suspension. *Re Bell Canada & Communication Workers; Shea grievance*, May 9, 1985. Majority: Springate, Switzman; dissent: Healy — 22 pages. (45)

Drinking after hours — mitigating circumstances; reinstatement without compensation. *Re Tip of the Bay Motor Hotel & S.E.U., Local 183; Pryde grievance*, May 6, 1985. Emrich — 11 pages. (46)

Driving company trucks while under the influence of alcohol — no evidence adduced to establish alcoholism or potential for rehabilitation; no condonation of conduct; grievance dismissed. *Re Polysar Limited, Resins Division & E.C.W.U., Local 803; Guenard grievance*, May 1, 1985. Verity — 14 pages. (47)†



Culminating incident; lateness — past record of persistent lateness — pattern not attributable to medical reasons or medication; grievance dismissed. *Re Certified Brakes — a Division of Lear Siegler Industries Limited & U.S.W.A.; Carrera grievance*, April 18, 1985. O'Shea — 15 pages. (48)

Driving accident — grievor totally at fault — brief period of employment with two previous accidents and poor attendance record; grievance dismissed. *Re Toronto Transit Commission & A.T.U., Local 113; Miller grievance*, May 1, 1985. Foisy, Beaulieu, Hetz — 15 pages. (49)

Failure to follow employer's procedures — serious ramifications of failure to do so; mitigating factors; reinstatement without compensation. *Re Dominion Electric Protection Company & I.B.E.W., Local 636; Ryan grievance*, April 10, 1984. Majority: Palmer, Corkett; dissent: Moore — 6 pages. (50)

Failure to meet performance standards — union alleged "M.O.S.T." system not reasonable standard to support discharge; standards reasonable. *Re Consumers Distributing Company Ltd. & Teamsters, Local 419; group grievance*, May 21, 1985. O'Shea — 20 pages. (51)†

Failure to report to work — not just cause where company attempting to notify grievor of obligation to report to work pursuant to reinstatement ordered by prior arbitration prior to receipt of formal award by parties; grievance allowed. *Re Omstead Foods Limited & Teamsters, Local 880; Sabelli grievance*, April 29, 1985. Majority: Egan, Baillargeon; dissent: Bartlet — 14 pages. (52)

Insubordination — employer failed to grant leave to attend union convention but grievor attended anyway; grievance denied. *Re Windsor Arms Hotel Ltd. & Food and Service Workers of Canada; Price grievance*, May 23, 1985. Barrett — 10 pages. (53)†

Insubordination; failure to carry out lawful order alleged — mitigating circumstances; grievance allowed. *Re The Algoma Central Railway & Seafarers' Int'l. Union; Crossan grievance*, September 21, 1984. Palmer — 12 pages. (54)

Lateness — absent without excuse culminating incident; mitigating circumstances; substitution of one month suspension. *Re Dow Chemical Canada Inc. & Graphic Communications International Union, Local 466; Hynes grievance*, May 14, 1985. Majority: Devlin, Solberg; dissent: MacLeod — 12 pages. (55)

Leaving work early — sickness not established; 30-day suspension substituted. *Re Rio Algom Ltd. & U.S.W.A.; Moffatt grievance*, May 28, 1985. Brunner — 14 pages. (56)

Negligent misconduct — culminating incident; grievance denied. *Re Alcan Products Limited, Kingston Works & U.S.W.A., Local 343; Kemp grievance*, April 16, 1984. Majority: Palmer, Sanderson; dissent: Taylor — 6 pages. (57)

Physical condition; loss of sight — no evidence that grievor incapable of performing her work safely; grievance allowed. *Re Drug Trading Company Limited Toronto and Druggists' Corporation Limited & E.C.W.U., Local 14; Yeaman grievance*, September 26, 1984. Palmer — 9 pages. (58)

Possession of alcohol culminating incident — no mitigating circumstances; grievance denied. *Re General Motors of Canada Ltd. & U.A.W., Local 222; McWhiter grievance*, May 25, 1984. Palmer — 21 pages. (59)

Possession of alcohol — no equivalence of discipline applied for misconduct arising out of similar circumstances; reinstatement without compensation. *Re Reed Decorative Products Limited & Canadian Paperworkers, Local 304; Hegarty grievance*, May 13, 1985. Majority: Saltman, Weisbach; dissent: Mayer — 12 pages. (60)

Probationary employee — collective agreement required 90 days notice to be given prior to release; failure to give notice does not invalidate release; only entitled to 90 days wages in lieu of notice; grievance dismissed. *Re Sheridan College Board of Governors & O.P.S.E.U.; Brackenridge grievance*, May 8, 1985. Majority: Brunner, Courtney; dissent: Kaufman — 20 pages. (61)

Probationary employee — limited scope of review; grievance denied. *Re Stratford General Hospital & O.N.A.; Bruxer grievance*, October 29, 1984. Majority: Palmer, Winkler; dissent: McIntyre — 17 pages. (62)

Procedure — failure to advise grievor of right to union representation at point of discharge or to provide such representation renders discharge void ab initio; grievance allowed. *Re Toronto Western Hospital & C.U.P.E., Local 1744; Bygrave grievance*, May 22, 1985. Majority: M.G. Picher, White; dissent: Redford — 22 pages. (63)\*

Quit alleged — failure to provide union representation at disciplinary interview rendering resignation of one grievor void ab initio; McPhail grievance dismissed, Charbonneau grievance allowed. *Re Miracle Food Mart Steinberg Inc. & U.F.C.W., Local 175; McPhail and Charbonneau grievances*, May 21, 1985. Brunner — 31 pages. (64)\*†

Verbal abuse of supervisory personnel — mitigating circumstances; grievance allowed in part. *Re St. Joseph's General Hospital & C.U.P.E., Local 243; O'Dette grievance*, May 27, 1985. Majority: Kates, Stolberg; dissent: Redford — 17 pages. (65)

Section 61.5 of Canada Labour Code — Negligent misconduct on part of grievor; apparent condonation by employer; application allowed. *Re Pineridge Broadcasting, a Division of 572047 Ontario Limited & David MacLachlan; s. 61.5 Canada Labour Code*, April 9, 1985. Emrich — 19 pages. (66)

Settlement made award of the Board; grievance withdrawn. *Re Reed Decorative Products Limited & Canadian Paperworkers Local 304; Hann grievance*, February 28, 1985. Palmer, Hall, Weisbach — 2 pages. (67)

Temporary absence program pursuant to non-job related criminal conviction — union alleged employer should be required to take part; not established; grievance denied. *Re Falconbridge Nickel Mines Ltd. & Sudbury Mine, Mill and Smelter Workers', Local 598; Gratton grievance*, April 16, 1984. Majority: Palmer, Valin; dissent: McIntyre — 11 pages. (68)

Theft — reinstatement not appropriate even though minor theft; grievance dismissed. *Re National Grocers Co. Ltd. & Teamsters, Local 880; Segato grievance*, May 7, 1985. Devlin — 15 pages. (69)†

Theft alleged — agreement that grievor would be reinstated if acquitted of criminal charges, not established; grievance to be resolved on merits. *Re Drug Trading Company Ltd., Sudbury & Canadian Chemical Workers, Local 11; Roche grievance*, May 14, 1985. Saltman — 5 pages. (70)

Theft of employer's property — no mitigating factors; grievance denied. *Re Libby, McNeill and Libby of Canada Ltd. & U.A.W., Local 251; Hunt grievance, January 27, 1984. Palmer — 7 pages. (71)*

Threatening and abusive language to supervisors — provocation by employer sufficient to mitigate penalty to suspension. *Re Central Park Lodge and London and District Service Workers', Local 220; Townsend grievance, May 16, 1985. Majority: Saltman, St. Pierre; partial dissent: Switzman — 16 pages. (72)*

Verbal abuse of supervisor when grievor acting as union official — incident occurred in private and not in presence of other employees; substitution of one-month suspension. *Re Firestone Canada Inc. & United Rubber Workers, Local 113; Cheeseman grievance, May 10, 1985. Black — 16 pages. (73)*

Violation of conditions of reinstatement alleged — not established; grievance allowed. *Re Rockwell International of Canada Ltd. & U.A.W., Local 1067; MacMillan grievance, May 24, 1985. Hunter — 14 pages. (74)*

#### Discipline

Absence without leave alleged — not established; grievance allowed. *Re Queensway General Hospital Association & C.U.P.E., Local 1106; Hewko grievance, May 27, 1985. Majority: Dunn, Switzman; dissent: MacDougall — 7 pages. (75)*

Breach of safety procedures — failure of employer to enforce procedures in past mitigates penalty; grievance allowed in part. *Re Inco Ltd. & U.S.W.A., Local 6500; Daurie grievance, September 24, 1984. Palmer — 2 pages. (76)*

Breach of work rule — rule must be clear and unequivocal; known to the employee; consistently enforced; reasonable; grievances allowed in part. *Re C.H. Heist (Canada) Ltd. & U.S.W.A., Local 8891; Cooke and Klimek grievance, May 16, 1984. Majority: Palmer, Fuller; dissent: Nadas — 13 pages. (77)*

Carelessness — failure to shut off machine and trigger its semi-automatic fire extinguisher to treat fire — established; suspension and demotion for limited time period upheld; grievance dismissed. *Re Heckett Division of Harsco Corporation & U.S.W.A., Local 7577; Miller grievance, May 23, 1985. Weatherill — 4 pages. (78)*

Culminating incident; absence from work station alleged — established poor past record; grievance dismissed. *Re Canada Post Corporation & C.U.P.W.; Best grievance, April 30, 1985. Burkett — 15 pages. (79)*

Dishonesty; false claim for indemnity benefits — misrepresentation minor in nature; grievance allowed. *Re MacMillan-Bathurst Inc. & Int'l. Woodworkers, Local 2-76; Delellis grievance, May 6, 1985. Adamson — 16 pages. (80)†*

Failure to perform duties properly — procedures in agreement followed closely; grievances denied. *Re McMaster University & McMaster University Security Officer's Association; Clifford, Button, Singer grievances, May 27, 1985. Boscarol — 6 pages. (81)†*

Fighting with fellow employee alleged — not proven; grievance allowed. *Re Inglis Limited & U.S.W.A., Local 2900; Cummings grievance, May 7, 1985. Weatherill — 10 pages. (82)*

Insubordination alleged; failure to work overtime when requested — not established; grievance allowed. *Re Spruce Falls Power and Paper Company Ltd. & Canadian Paper Workers, Local 89; Dumaresqu grievance, July 23, 1984. Majority: Palmer, Stencer; dissent: Noonan — 7 pages. (83)*

Insult — alleged failure to perform assigned duties — grievor informed employee of her inability to perform tasks without orientation; four days suspension reduced to written warning. *Re The West Nipissing General Hospital & O.N.A.; Tessier grievance, June 24, 1984. Majority: Palmer, Ballantyne; dissent: Campeau — 12 pages. (84)*

Insult and fighting alleged — not established; grievance allowed. *Re Zettel Manufacturing Ltd. & U.A.W., Local 1524; Lawrence grievance, September 30, 1984. Palmer — 6 pages. (85)*

Insult; failure to comply with an order — order made during unpaid break; warning substituted for suspension. *Re Cornwall, Corporation of the City of & C.U.P.E., Local 234; Martin grievance, April 30, 1985. England — 27 pages. (86)†*

Insult; failure to perform work as ordered — mitigating circumstances; grievance allowed. *Re Outdoor Outfits Ltd. & United Garment Workers, Local 253; Gajadhar grievance, May 23, 1985. Houston — 9 pages. (87)†*

Insult — grievor not insubordinate by refusing an order from a person who was not his supervisor and not related to his work; grievance allowed. *Re Inco Ltd. & U.S.W.A., Local 6500; Beauparlant grievance, September 24, 1984. Palmer — 2 pages. (88)*

Insult — not justified because grievor a union committee man; grievance denied. *Re General Motors of Canada Ltd. & U.A.W., Local 222; Strong grievance, July 27, 1984. Palmer — 13 pages. (89)*

Insult — repeated failure of grievor to carry out orders of supervisors; grievance denied. *Re Bilt-Rite Upholstering Company Limited & The Upholsterers' Int'l. Union; Salwan grievance, December 6, 1984. Palmer — 8 pages. (90)*

Intoxication — grievor under the influence of alcohol at work; grievance denied. *Re Inco Limited & U.S.W.A.; Neville grievance, January 28, 1985. Palmer, Aubut, McIntosh — 6 pages. (91)*

Leaving work station and sleeping on job — grievances allowed in part. *Re Acme Strapping Inc. & U.S.W.A., Local 6572; Klinck grievances, May 23, 1985. Wilson — 11 pages. (92)†*

Letters of reprimand for failure to properly supervise child — appropriate notwithstanding responsibility shared by others; grievance denied. *Re Sunbeam Home & London and District Service Workers, Local 220; Smith, Mulligan-Newton grievances, May 9, 1985. Saltman, Lainy, Solberg — 12 pages. (93)*

Medication error — failure to notify Head Nurse merits some discipline; suspension reduced. *Re Ottawa Civic Hospital & O.N.A.; Dunnah grievance, April 22, 1985. Majority: Lunney, Mustard; dissent: Beaulieu — 11 pages. (94)*



Negligence in the operation of a company vehicle — suspension appropriate but compensation for damage to vehicle disallowed; grievance allowed in part. *Re Sudbury Hydro-Electric Commission & C.U.P.E., Local 1052; Yaw grievance*, April 26, 1985. Solomatenko — 12 pages. (95)†

Security of penalty — grievor did not cause incident and suffered same penalty as those who did; grievance allowed. *Re Inco Limited & U.S.W.A., Local 6500; Jolly grievance*, September 24, 1984. Palmer — 2 pages. (96)

Theft of company property — company entitled to suspend grievor pending result of criminal proceedings — suspension not contested until two years later when grievor acquitted — no compensation for period prior to acquittal; grievance allowed in part. *Re Reynolds Aluminum Company of Canada Ltd. & Int'l. Molders & Allied Workers, Local 28; Persad (Kumar) grievance*, May 17, 1985. McLaren — 14 pages. (97)

Unsafe driving endangering others contrary to disciplinary rule — discipline not justified in circumstances — day to day occurrence; grievance allowed. *Re Eldorado Resources Limited & U.S.W.A., Local 13173; Dafoe grievance*, March 25, 1985. Palmer — 4 pages. (98)

Verbal abuse of foreman — inadvertent; grievance allowed in part. *Re Ralston Purina Canada Inc. & E.C.W.U., Local 41; Soares grievance*, March 8, 1985. Palmer — 6 pages. (99)

Wasting time and abusive to foreman when discovered — suspension justified; grievance denied. *Re Arrowhead Metal Ltd. & U.A.W., Local 399; Jones grievance*, July 31, 1984. Palmer — 10 pages. (100)

Work performance — warning and transfer to supervised position justified when employee seemingly unable to perform work without supervision; grievance denied. *Re The Toronto East General Hospital & Association of Allied Health Professionals; Dakos grievance*, May 9, 1985. Majority: P. Picher, Clarkson; dissent: McKellar — 17 pages. (101)

### Estoppel

Union silence during negotiations not amounting to estoppel — union entitled to rely upon agreement re hours of work; grievance allowed. *Re The Great Atlantic and Pacific Tea Co. of Canada Ltd. & U.F.C.W., Locals 175 and 633; policy grievance*, May 29, 1985. Davis — 12 pages. (102)†

### Evidence

Charter of Rights — self incriminating evidence alleged to have been given at a prior arbitration — Charter applies; prior statement not self incriminating; statement admissible. *Re MacMillan-Bathurst Inc. & Int'l. Woodworkers, Local 2-76; Delellis grievance*. See (80) *supra*. (103)†

### Grievance Procedure

Timeliness — continuing grievance; liability affected. *Re Rockwell International of Canada Ltd. & U.A.W., Local 127; McCutchen grievance*, October 15, 1983. Palmer — 4 pages. (104)

Timeliness — delay of seventeen months from time grievor aware of circumstances; ignorance of procedure no excuse; grievance denied. *Re Halar, Corporation of the Township of & U.S.W.A., Boivin grievance*, March 13, 1984. Majority: Palmer, Wuksinic; dissent: Guillet — 5 pages. (105)

Timeliness — lengthy delay; grievance denied. *Re Federal White Cement & United Cement, Lime and Gypsum and Allied Workers Division of Int'l. Brotherhood of Boilermakers, Local D 368; Anderson grievance*, May 14, 1985. Gorsky — 9 pages. (106)†

Timeliness — no reasonable grounds for relieving against time limits; grievance denied. *Re Bilt-Rite Upholstering Company & Upholsterers' Int'l. Union; policy grievance*, October 22, 1985. Palmer — 4 pages. (107)

Timeliness of filing of grievance — termination on basis that grievor medically unfit for available work in April; actions and correspondence on behalf of grievor apparently accepting grounds for termination until grievance filed following November; no reasonable ground to extend mandatory time limits; grievance dismissed. *Re Inco Limited & U.S.W.A., Brouillard grievance*, May 17, 1985. Majority: Weatherill, Simpson; dissent: Lamb — 10 pages. (108)

Timeliness — under agreement time begins to run when union aware of breach; no grounds for extension; grievance dismissed. *Re Trailmobile Canada & U.A.W., Local 397; White grievance*, December 27, 1984. Palmer — 6 pages. (109)

Timeliness — union alleged that incarceration of grievor and the fact of a strike grounds for relief against time limits; no grounds for extending time limits; grievance denied. *Re M.T.D. Limited & U.A.W., Local 1524; Minda grievance*, July 30, 1984. Palmer — 9 pages. (110)

### Health and Safety

Payment for attending health and safety meetings — not meetings of health and safety committee; grievance denied. *Re Sudbury Algoma Hospital & O.N.A.; Conroy and Charsley grievance*, May 20, 1985. Duchesneau-McLachlan — 17 pages. (111)†

Training time — off-site training to be included; grievance denied. *Re Holmes Foundry a Division of American Motors (Canada) Inc. & U.A.W., Local 456; Nield grievance*, May 13, 1985. Hinnegan — 6 pages. (112)

### Holiday Pay

Entitlement — employees on vacation or laid off at the time of the 1982 Labour Day and Civic Holidays entitled to payment according to minutes of settlement incorporated in the award; grievance allowed. *Re Nordfibre Company and Canadian Paperworkers, Local 870; group grievance*, May 15, 1985. Black, Braund, Paxton — 6 pages. (113)

Entitlement and quantum — part-time employees working their regularly scheduled shift preceding and following the holiday entitled to holiday pay at rate of double-time and one-half for hours worked; grievances allowed. *Re Vernon Nursing Home Services Ltd. (Fairvern Nursing Home) & H.O.P.E., Local 206; group grievance*, April 26, 1985. Samuels; partial dissents: Mustard, Rudrum — 11 pages. (114)

Laid-off employees — not working qualifying days, not entitled to payment; grievance dismissed. *Re Sunar Hauserman Limited & U.S.W.A., Local 3292; policy grievance*, April 30, 1985. O'Shea — 9 pages. (115)

Lay-off — union alleged that employees entitled to holiday pay during lay-off if scheduled shift before and after holiday worked; grievance allowed. *Re Nordfibre Company & Canadian Paperworkers, Local 870; policy grievance*, August 20, 1983. Majority: Palmer, Weisbach; dissent: Braund — 7 pages. (116)

**Hours of Work**

Excess hours worked without credit or pay alleged — extra hour worked voluntarily undertaken by grievor and not assigned; grievance dismissed. *Re Fanshawe College & O.P.S.E.U.; Crunwell grievance*, May 21, 1985. Majority: Brent, Hoddle; dissent: Walsh — 14 pages. (117)

Hours of work scheduled for part-time employees reduced as result of error in failing to schedule full-time employee — no guarantee of hours; company entitled to correct mistake; policy grievance dismissed. *Re Vernon Nursing Home Services Ltd. (Fairvern Nursing Home) & H.O.P.E., Local 206; policy grievance*. See (114), *supra*. (118)

Overtime claim for work on Monday — past practice of the parties indicated that it was not considered a scheduled day off; grievance dismissed. *Re Victoria Manor & C.U.P.E., Local 1167; Bartlett grievance*, April 30, 1985. Solomatenko — 7 pages. (119)†

**Illness**

Return to work — employer reasonable in requiring more evidence of ability to return to work; grievance dismissed. *Re Sheller-Globe of Canada Ltd. & U.A.W., Local 1285; Reid grievance*, May 3, 1985. Hinnegan — 9 pages. (120)

Return to work — employer requirement of undertaking to work harder improper; grievance allowed. *Re Raybestos Canada Inc. & U.S.W.A., Local 5141; Mallat grievance*, October 23, 1984. Palmer — 5 pages. (121)

**Interest Arbitration**

Settlement of outstanding terms; Sabbatical leave — accumulation of sick leave — car lease. *Re Ontario English Catholic Teachers Association & Deputy General Secretary, Department Co-ordinator and Staff Assistants Employed by the Ontario English Catholic Teachers' Association; O'Connor grievance*, October 23, 1984. Majority: Palmer, Maltice; dissent: Thorup — 12 pages. (122)

Wage increase — consideration of economic conditions; Provincial Legislation and the employer's ability to pay; 5% increase awarded. *Re Cobourg, Corporation of the Town of & Cobourg Police Association*; May 17, 1985. Aggarwal — 46 pages. (123)

**Interpretation**

Ambiguity alleged — number of taxi's permitted to operate specified in the collective agreement; no ambiguity; grievance allowed. *Re 121571 Canada Incorporated & R.W.D.S.U., Local 1688, Ontario Taxi Association; policy grievance*, May 8, 1985. Frankel — 21 pages. (124)†

**Job Evaluation**

Change of duties alleged — onus on union to show that job duties changed during life of agreement; grievance denied. *Re McGaw Manufacturing, a Division of McGaw Supply Limited & U.A.W., Local 397; Luciani and Thownson grievances*, February 8, 1985. Palmer — 3 pages. (125)

Higher classification sought — union alleging that aspects of work including 'accountability' and 'safety of others' merited higher rating; grievance denied. *Re Toronto, Corporation of the City of & C.U.P.E., Local 43; policy grievance*, March 19, 1985. Majority: E.B. Jolliffe, Milks; dissent: Tate — 109 pages. (126)

**Job Posting**

Entitlement to apply — success in prior posting precluded consideration in instant use; grievance denied. *Re Neelson Castings Ltd. & U.S.W.A., Local 6363; Vaillancourt grievance*, June 8, 1984. Palmer — 7 pages. (127)

Failure to post alleged — not established; grievance denied. *Re Strathaven Nursing Home Ltd. — C.U.P.E., Local 2225-05; Hall, Samuel, Allman grievance*, May 8, 1985. O'Shea — 14 pages. (128)†

Job Requirements— requirements in some respects questionable but no evidence that grievor suitable for position; grievance denied. *Re Toronto Licensing Commission & C.U.P.E., Local 79; Pilarski grievance*, May 11, 1985. Kates, Moran, Solberg — 24 pages. (129)

Lower-rated job awarded to grievor — entitled to be assigned to job; grievance allowed. *Re Heckett Division of Harsco Corporation & U.S.W.A., Local 7577; Sweet grievance*, May 23, 1985. Weatherill — 6 pages. (130)

**Job Vacancy**

Existence of vacancy — periodic short term reassignment to previous classification not evidence of vacancy; grievance denied. *Re Federal White Cement Ltd. & United Cement Lime, Gypsum and Allied Workers Division of International Brotherhood of Boilermakers Int'l. Union, Local D589; Pearson grievance*, May 7, 1985. Barton — 8 pages. (131)

**Lay-off**

Applicability of lay-off procedures — excluded from lay-off provision by agreement; grievance denied. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology (Conestoga College) & O.P.S.E.U.; Dick grievance*, August 25, 1984. Majority: Palmer, Mason; dissent: Switzman — 10 pages. (132)

Bumping — no clear representation that employer to waive job requirements; estoppel not applicable; grievance dismissed. *Re The Cooper Tool Group Ltd. & U.S.W.A., Local 6709; Lamb and Kuehni grievances*, May 23, 1985. Devlin — 16 pages. (133)†

Bumping rights — in absence of clear language bumping up will not be found; grievance denied. *Re Master Brendan Industrial Services Ltd. & U.S.W.A., Local 7578; Severin grievance*, July 20, 1984. Palmer — 6 pages. (134)

Bumping rights — joint management — union committee empowered to utilize creative redeployment in conjunction with usual bumping procedure; system applicable nationally throughout unit; grievance allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; policy grievance*, April 11, 1985. M. Picher — 19 pages. (135)

Bumping rights; right exercised after the posting of the schedule — rights in agreement take precedence over scheduling policy; grievance allowed. *Re Manville Canada Inc. & E.C.W.U., Local 26; Gage grievance*, May 1, 1985. Solomatenko — 11 pages. (136)

Effect of permanent lay-off — terminating employment; grievance denied. *Re Redirack Limited/Limitee & U.S.W.A.; policy grievance*, May 15, 1985. Brent — 10 pages. (137)†

Equipment breakdown prompting management to advance lay-off ahead of date originally scheduled for lay-off — work available to be performed; grievance allowed. *Re Chromasco, a Division of Timminco Ltd. & U.S.W.A., Local 4632; Lemenchick grievance*, April 29, 1985. Pyle — 12 pages. (138)†



Full-time employees laid off — sales figures substantiating reduction of available work; grievance dismissed. *Re Dominion Stores Limited & Retail, Commercial & Industrial Union, Local 206; group grievance*, May 17, 1985.

Majority: Brent, Sargeant; dissent: Rudrum — 25 pages. (139)

Improper lay-off alleged — no work being moved to cause reduction of employees; grievance dismissed. *Re Ryder & Teamsters, Local 879; Pacan grievance*, May 16, 1985.

Brent, Fosbery, Schultz — 12 pages. (140)

Qualifications — employer attempting to abridge seniority must show real and demonstrable difference in capability between senior employees and those retained; grievance allowed. *Re Hilton Works Stelco Inc. & U.S.W.A., Local 1005; Charron, Klepich grievances*, May 15, 1985.

Majority: Brent, Marshall; dissent: Moran — 11 pages. (141)

Qualifications — employer required to examine the qualifications of employees in making promotion decision; grievance allowed in part. *Re Hamilton-Wentworth, Municipality of & C.U.P.E., Local 167; policy grievance*, May 9, 1985. Rose — 13 pages. (142)

Qualifications — grievors lacking present ability even with familiarization to perform the work with the efficiency equal to that possessed by incumbents; grievances dismissed. *Re La Verendrye General Hospital & C.U.P.E., Local 795; group grievance*, April 26, 1985. O'Shea — 22 pages. (143)

Qualifications — no obligation to train where competition between permanent employees; grievance dismissed. *Re F.W. Woolworth Co. Ltd. & R.W.D.S.U., Local 414; Marrone, Williams, Wynott, Zuniga grievances*, May 17, 1985. Saltman — 7 pages. (144)†

Qualifications — meaning of 'currently qualified' — requiring ability to perform tasks immediately; grievance denied. *Re Inco Limited & U.S.W.A., Local 6500; Rosein grievance*, May 10, 1985. Majority: Palmer, Keenan; dissent: Keuhl — 10 pages. (145)

Redundancy resulting from re-organization — lay-off proper; grievance denied. *Re York University & York University Staff Association; Mitchell grievance*, May 23, 1985. O'Shea — 21 pages. (146)†

Reorganization — bona fide redundancy; grievance dismissed. *Re York University & York University Staff Association; Paul grievance*, April 30, 1985. Egan — 11 pages. (147)†

Retention of freelance research personnel permissible on condition of no indirect negative impact on job security of bargaining unit personnel — abolition of two positions consequence of retention of freelance personnel; grievance allowed. *Re Canadian Broadcasting Corporation & C.U.P.E. (Broadcast Division), grievance D16 PT II*, May 17, 1985. M.G. Picher — 25 pages. (148)

## The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of August, 1985.

*Toronto East General and Orthopaedic Hospital Inc. & Assoc. of Allied Health Professionals, Ontario*; V.E. Scott, Bass, McKellar — 7 pages.

*Toronto General Hospital & O.P.S.E.U., Local 571 (technologists)*; V.E. Scott; addendum: Solberg; dissent to follow: O'Byrne — 8 pages.

*Queensway-Carleton Hospital & I.U.O.E., Local 796*; O'Shea, Mustard; dissent: Sullivan — 8 pages.

*Sunnydale Home (Community Nursing Homes) & C.U.P.E.*; V.E. Scott, Switzman; dissent: Wakely — 17 pages.

*St. Mary's General Hospital (Kitchener) & L.D.S.W.U., Local 220*; H.D. Brown, Lewis; dissent: Fillion — 22 pages.

*F.J. Davey Home (Sault Ste. Marie) and Algoma District Home for the Aged (Algoma Manor, Thessalon) & C.U.P.E., Locals 2446 and 268*; Baum; addendum: Robbins; dissent: Bernardi — 15 pages.

*St. Andrew's Residence & S.E.U., Local 210*; McKechnie, Wakely, Lewis — 16 pages.

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# Monthly Bulletin



Ontario Ministry of Labour



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## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the Labour Relations Act are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of June, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Access to full-time employment for part-time employees — separate collective agreements; grievance not arbitrable. *Re Weetabix of Canada (Mfg.) Ltd. & U.F.C.W.U., Local 1230-8; Macklin, Roth, Montreuil and Baker grievances*, June 21, 1985. Thorne — 8 pages. (1)†

Delay in referring matter to arbitration — delay unreasonable, but no evidence of prejudice established — not improper to proceed; grievance arbitrable; interim award. *Re Maritime Employers Assoc. et al & Int'l. Longshoremen's Assoc., Association grievance*, May 15, 1983. Brent — 7 pages. (2)



Discharge of grievor during lawful strike — no collective agreement in operation; grievance not arbitrable. *Re Pre Fab Cushioning Products Limited & U.E., Local 514; Robinson grievance*, June 5, 1985. O'Shea — 10 pages. (3)†

Discharge of probationary employee — discharge "at the sole discretion of the employer" — grievor entitled to contest discharge on basis that discretion exercised in bad faith or for improper purpose; interim award. *Re LaPointe-Fisher Nursing Home & H.O.P.E., Local 206; Taylor grievance*, June 4, 1985. Majority: Saltman, Rudrum; partial dissent: Duncan — 10 pages. (4)

Distribution of weekend work alleged discriminatory and unfair in policy grievance — no provision in collective agreement limiting management's right to so schedule — no discipline or discrimination established; grievance not arbitrable. *Re Mount Sinai Hospital & O.P.S.E.U.; Ping Wu et al grievance*, June 7, 1985. Brent, Boettcher, Herbert — 10 pages. (5)

Timeliness of request for expedited arbitration pursuant to s. 45 — request made when mailed; Minister's delay in convening hearing not nullifying appointment; interim award. *Re Ottawa-Carleton, Regional Municipality of & C.U.P.E., Local 503; Levesque grievance*, June 7, 1985. Carrothers — 13 pages. (6)†

Timeliness of request for s. 45 appointment — time limits in grievance procedure apply only as to giving notice, not as to when actual application made — grievance arbitrable. *Re Transit Windsor & A.T.U., Local 616; Paronuzzi grievance*, June 24, 1985. Egan — 8 pages. (7)†

Welfare plan — no right to grieve denial of benefits for long-term disability where provisions of insurance policy correspond to provisions in collective agreement; grievance dismissed. *Re C.I.P. Inc. (Burlington) & Canadian Paperworkers, Local 949; Smith grievance*, June 11, 1985. Swan — 17 pages. (8)

#### Benefits

Payment of annual professional fees — obligation to continue payment of benefits until mutual agreement with union to the contrary; grievance allowed. *Re Public Service Alliance of Canada & Alliance Employees' Union, unit 11; Simpson grievance*, May 14, 1985. Edwards — 12 pages. (9)

#### Bereavement Leave

Entitlement where death of husband of husband's sister — deceased not a brother-in-law; grievance dismissed. *Re Sydenham District Hospital & O.N.A.; Hasson grievance*, May 30, 1985. Barton — 6 pages. (10)†

#### Classification

Higher classifications sought — duties of the positions examined — K. grievance allowed; B. grievance dismissed. *Re Oshawa, Corp. of the City of & C.U.P.E., Local 251; Ethier, Piekenbrock, Krause & Barnieske grievances*, April 30, 1985. Majority: H.D. Brown, Richardson; partial dissent: Nagel — 49 pages. (11)

Higher classification sought — grievor performed duties of higher classification; grievance allowed. *Re Deep River, Corp. of the Town of & C.U.P.E., Local 740; MacLaren grievance*, May 31, 1985. Kates, Head, Read — 7 pages. (12)

Improper ranking alleged — application of job evaluation plan — plan applied correctly and fairly; grievance dismissed. *Re Peterborough Civic Hospital & O.P.S.E.U., Local 345; group grievance*, May 29, 1984. Emrich — 39 pages. (13)†

Temporary work assignment — performed significant duties of higher classification — violation of collective agreement, but estoppel operating until expiry of collective agreement; grievance dismissed. *Re V.S. Services at Great War Memorial Hospital & O.P.S.E.U., Local 466; Wilson grievance*, May 14, 1985. Majority: H.D. Brown, Steeves; addendum: Steeves; dissent: Hunter — 24 pages. (14)

#### Contracting-Out

Freelance cameraman used for out-of-country assignment — interpretation of 'practical' includes cost-benefit analysis; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; union policy grievances*, June 17, 1985. M. Picher — 18 pages. (15)

Maintenance of repair work — agreement guarantees work to be done by bargaining unit employees where possible — limits right to contract out; grievance allowed in part. *Re Ault Dairies & Milk and Bread Drivers, Local 647; Beharry grievance*, June 6, 1985. MacDowell — 20 pages. (16)

Production of metal cans — employees able to perform some of the work; grievance allowed in part. *Re Nabisco Brands Ltd. & U.F.C.W.U., Local 1182-5; policy grievance*, June 13, 1985. Davis — 13 pages. (17)†

#### Demotion

Assault upon government inspector — incident sufficiently job related to justify disciplinary demotion; grievance dismissed. *Re Gilbarco Canada Ltd. & Canadian Union of Golden Triangle Workers; Mazur grievance*, June 13, 1985. H.D. Brown — 19 pages. (18)

#### Discharge

Absence from work for continuous period of eighteen months leading to loss of seniority and termination — discretion to extend to be exercised reasonably — direction to accept proposal of Workmen's Compensation Board pending decision on grievor's ability to return to work; grievance allowed in part. *Re Woolworth Co. & R.W.D.S.U., Local 414; Pabla grievance*, June 7, 1985. Barrett — 7 pages. (19)†

Absenteeism — excessive absenteeism possibly attributable to compensable industrial accident; appeal on issue pending before Workmen's Compensation Board; decision to uphold discharge or reinstate contingent upon result of appeal. *Re Van Dresser Limited & U.A.W., Local 1524; Castro grievance*, June 6, 1985. Black — 19 pages. (20)†

Absenteeism — grievor capable of regular attendance in future as underlying cause of absenteeism eliminated; reinstatement with conditions. *Re Oaklands Regional Centre & O.P.S.E.U., Local 249; Honig grievance*, June 6, 1985. Verity, Tarasuk, O'Neil — 18 pages. (21)

Absenteeism — record of recurring absences — evidence subsequent to termination of ability to return to work not to be considered; grievance dismissed. *Re Ottawa General Hospital & C.U.P.E., Local 1657; Talbot grievance*, May 30, 1985. H.D. Brown, Ballantyne, Beaudry — 19 pages. (22)\*

Absenteeism — recurrent absences from work due to back injury — unlikely to provide regular attendance in future; grievance dismissed. *Re Titan Proform Co. Limited & U.A.W., Local 124; Daley grievance*, May 28, 1985. O'Shea — 10 pages. (23)

Absenteeism — repetitive instances of back strain — insufficient evidence to establish that grievor capable of regular attendance in future; grievance dismissed. *Re Sudbury, Corp. of the City of & C.U.P.E., Local 1662; Gratton grievance*, June 5, 1985. Duchesneau-McLachlan — 15 pages. (24)

Accident record — culminating incident only example of negligence; conditional reinstatement. *Re Abitibi-Price Inc., Lakehead Woodlands Division & Lumber and Sawmill Workers, Local 2693; Gomes grievance*, June 14, 1985. Majority: Hearn, Brady; dissent: Johnston — 24 pages. (25)

Assault on fellow employee — provocation established and actions not premeditated nor permanently damaging to employment relationship — grievor not candid about criminal record; reinstatement without compensation. *Re Rolland Inc. & Canadian Paperworkers; Tubrett grievance*, May 14, 1985. Rayner; dissents: McIntyre, Redford — 15 pages. (26)

Carelessness resulting in fire — other employees contributorily negligent, but not disciplined — discharge held not equitable; reinstatement with seniority, but no compensation. *Re Essex Terminal Railway Co. & Teamsters, Local 880; Nantais grievance*, June 20, 1985. Majority: MacDowell, Burnell; dissent in part: Baillargeon — 43 pages. (27)\*

Conflict of interest — employee running business in violation of company rules; no actual harm to employer's business held to mitigate penalty; reinstatement with no compensation. *Re Granada TV Rental Ltd. & I.B.E.W., Local 549; Howarth grievance*, June 28, 1985. Emrich — 30 pages. (28)†

Counselling and participating in illegal work stoppage over clothing issue — actions were wilful and deliberate in subordination; grievance dismissed. *Re Loomis Courier Service Ltd. & Assoc. of Ontario Loomis Drivers; Godin grievance*, June 25, 1985. Brent — 21 pages. (29)

Culminating incident — breach of safety standard — fact that no one hurt not relevant to issue; incident established. *Re Carling O'Keefe Breweries of Canada Ltd. & United Brewery Workers, Local 325; Smith grievance*, May 31, 1985. H.D. Brown — 31 pages. (30)

Falsification of production records — employer rule specifies discharge as penalty; grievance dismissed. *Re United Tire & United Rubber Workers, Local 687; Azevedo grievance*, June 19, 1985. Burkett — 15 pages. (31)

Insubordination and laying frivolous criminal charge against supervisor — established; grievance dismissed. *Re Procor Limited & International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 75; Rogers grievance*, July 6, 1985. Hinnegan — 11 pages. (32)†

Lateness and lying about reason for lateness — poor past record — no mitigating factors; grievance dismissed. *Re Kelsey-Hayes Canada Limited (Conroy Division) & U.A.W., Local 199; Rivers grievance*, June 12, 1985. Black — 10 pages. (33)†

Negligence — destruction of company property due to negligent driving by employee; test of whether accident was wilfully intended; reinstatement with 6 months' loss of seniority and pay. *Re Kimberly-Clark of Canada & Lumber and Sawmill Workers, Local 2683; Koroscil grievance*, June 25, 1985. Majority: Baum, Johnston; dissent in part: Brady — 20 pages. (34)

Off-duty conduct — criminal charges pending — not related to the grievor's work; grievance allowed. *Re Air Canada & C.A.L.E.A.; M. grievance*, May 27, 1985. Simmons — 4 pages. (35)

Procedure — union representative not present — duty of employer to inform employee of right to representation; employee reinstated with compensation. *Re Hickeson-Langs Supply Co. & Teamsters, Local 419; Laidlaw grievance*, June 20, 1985. Majority: Burkett, Fraser; dissent: Houck — 29 pages. (36)\*

Theft — long-term employee; allowed to resign with no reference to incident. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Local 2251; Whalen grievance*, June 4, 1985. Majority: Devlin, Morley; dissent: Woodcock — 13 pages. (37)

Theft alleged — not established — failure to follow proper procedures; substitution of three-month suspension. *Re Charterways Transport Ltd. & Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees, Local 352; Chopp grievance*, June 18, 1985. Majority: Springate; partial dissent: Wightman; dissent: Stewart — 45 pages. (38)

Theft of hospital property — value of theft subordinate to breach of trust issue — grievance denied. *Re Parkwood Hospital and McCormick Home & L.D.S.W.U., Local 220; Smith grievance*, June 20, 1985. E.B. Jolliffe — 10 pages. (39)†

Unauthorized absence for a period exceeding three scheduled working days alleged — not established; grievance allowed. *Re Stroudal Marketing Limited & R.W.D.S.U., Local 414; Schmidt grievance*, June 11, 1985. Weatherill, Dahmer, White — 11 pages. (40)

Work performance — complaints from public — discharge not justified; substitution of two-day suspension. *Re Phillips Security Agency Inc. & U.F.C.W.U., Local 409; Goodwin grievance*, June 10, 1985. Aggarwal — 21 pages. (41)†

Work performance — position of responsibility such that discharge justified; grievance denied. *Re Thibodeau-Finch Express Ltd. & Teamsters, Local 880; Lalonde grievance*, June 18, 1985. Majority: Brent, Tayles; dissent: Baillargeon — 28 pages. (42)

### Discipline

Cancellation of disciplinary record — time between disciplinable conduct including period of lay-off; grievance allowed. *Re Robertson Building Systems Ltd. & Shopmen's Local No. 739, International Assoc. of Bridge, Structural and Ornamental Iron Workers; Langford grievance*, May 31, 1985. Majority: H.D. Brown, Bosnich; dissent: Reistetter — 16 pages. (43)\*

Employer's product damaged and misappropriated — progressive discipline appropriate; ten-day suspension reduced to five days. *Re General Mills Canada Inc. & American Federation of Grain Millers, Local 230; Attard grievance*, June 17, 1985. Burkett — 15 pages. (44)

Failure to follow safety procedure — union alleged that grievor not in violation of 'strict wording' — not a question of legalese, but common sense; grievance denied. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; Nita grievance*, June 11, 1985. R.J. Roberts — 16 pages. (45)†

Insubordination: Abusive language to foreman — grievor plant chairman; language not overheard by other employees; three-day suspension reduced to one day; *Re Elan Tool and Die Limited & U.A.W., Local 127; Strain grievance*, May 8, 1985. Rayner — 14 pages. (46)



Insubordination alleged; failure to undergo psychiatric examination — employer lacking contractual authority to make order; grievance allowed. *Re Riverdale Hospital & C.U.P.E., Local 79; Veacock grievance*, June 17, 1985. Majority: Burkett, McDonald; dissent: Ronson — 28 pages. (47)\*

Insubordination alleged — failure to work agreed overtime; — discipline not warranted; warning letter removed; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; five grievances*, June 4, 1985. Brunner — 12 pages. (48)

Insubordination alleged — provocation of employee by supervisor; supervisor failed to follow proper procedure — suspension held to be excessive; reduced to written warning. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Local 279; Thomas grievance*, June 25, 1985. Emrich, Harnden, Emond — 16 pages. (49)

Insubordination — leaving work early without permission or reasonable excuse — suspension reasonable; grievance dismissed. *Re Square D Canada Electrical Equipment Inc. & U.E., Local 505; Peckford grievance*, May 23, 1985. R.J. Roberts — 17 pages. (50)†

Negligence causing minimal damage to aircraft — last clear chance doctrine of no relevance; mitigating circumstances; six-day suspension. *Re Air Canada & I.A.M.*; June 11, 1985. Teplitsky — 4 pages. (51)

Poor work performance alleged — not proven; grievor was insubordinate and deserving of some discipline; reduced to five-day suspension; grievance allowed in part. *Re St. Catharines Transit Commission & A.T.U., Local 846; Etheridge grievance*, June 5, 1985. Barrett — 9 pages. (52)†

### Estoppel

Conduct at bargaining table — sword/shield distinction rejected — representations at the bargaining table; union estopped. *Re East York, Board of Education for the Borough of & C.U.P.E., Local 463; policy grievance*, June 4, 1985. Baum — 12 pages. (53)†

Uniform allowance pro-rated when transferred out of department — clause ambiguous — union acquiesced to previous pro-ratings so could not grieve meaning now; grievance dismissed. *Re Halton Regional Board of Commissioners of Police & Halton Regional Police Association; Bogue grievance*, May 24, 1985. Jackson — 18 pages. (54)

### Evidence

Conference telephone call — allowed as method to adduce reply evidence in circumstances where difficulty, expense and delay prevent witness from attending hearing; interim award. *Re Bell Canada & Douglas Farrell; Farrell grievance*, June 7, 1985. O'Shea — 9 pages. (55)

Transcript from grievor's criminal trial — admissible at arbitration hearing. *Re Ontario Hydro & Ontario Hydro Employees, Local 1000; Ciphery grievance*, June 17, 1985. Majority: P. Picher, McNaughton; dissent in part: Switzman — 4 pages. (56)

### Grievance Procedure

Group grievance — form of grievance appropriate. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; policy grievance*, June 12, 1985. Joyce — 22 pages. (57)†

Timeliness — grievance filed outside mandatory time limits in collective agreement; no power to extend limits pursuant to Canada Labour Code; no reasonable cause for extension established; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Restoule grievance*, May 24, 1985. O'Shea — 15 pages. (58)

Timeliness — grounds for extending time limits and no substantial prejudice to employer; delay affecting grievor's compensation. *Re K.S.R. Industrial Corporation & U.A.W., Local 347; Cartier grievance*, June 21, 1985. Samuels — 7 pages. (59)†

### Holidays

Accumulation of statutory holiday credits; grievors ordered to reduce accumulated amount — not disciplinary — order reasonable; N. and K. grievances dismissed; M. grievance allowed in part. *Re Sarnia, Board of Commissioners of Police for the City of & Sarnia Police Assoc.; Kennedy, McMahan and Nelson grievances*, May 17, 1985. Saltman — 22 pages. (60)

### Holiday Pay

Calculation — regular rate of pay for nine hours to be paid for statutory holiday regardless of regular working hours of day that holiday actually taken; grievance dismissed. *Re G.W. Martin Limited & United Brotherhood of Carpenters and Joiners, Local 1030; union grievance*, May 30, 1985. Duscheneau-McLachlan — 5 pages. (61)†

Day off in lieu of statutory holiday — holiday pay on statutory holiday not justified; grievance dismissed. *Re Windsor Star & Windsor Newspaper Guild, Local 239; policy grievance*, May 13, 1985. Eaton — 48 pages. (62)†

Entitlement: part-time employees — entitlement established; grievance allowed. *Re Windsor Star & Windsor Newspaper Guild, Local 239; policy grievance*. See (62), *supra*. (63)†

Entitlement — rehired employees must have completed two months of employment during the eighteen months immediately preceding the statutory holiday; grievance dismissed. *Re International Harvester Company & U.A.W., Local 127; policy grievance*, June 11, 1985. Brandt — 15 pages. (64)†

### Hours of Work

Shift schedule terminated — premium and overtime rates for "off" days terminated with schedule; grievance dismissed. *Re Noranda Metal Industries Ltd., Fergus Division & I.B.E.W., Local 2345; Rogers, Vroenhoven, Bezusko and Menary grievances*, June 21, 1985. Dunn — 5 pages. (65)†

### Job Evaluation

Arbitrability of committee's decision on specific salary — salary level set by committee is not reviewable, but individual's specific salary in level is; grievance allowed. *Re Timmins, Corp. of the City of & C.U.P.E., Local 434; Mayer and Morrish grievances*, June 24, 1985. Black — 13 pages. (66)†

Entitlement — material change in duties and responsibilities of the job; entitled to job evaluation; grievances of E. and P. allowed. *Re Oshawa, Corp. of the City of & C.U.P.E., Local 251, Ethier, Piekenbrock, Krause and Barnieske grievances.* See (11), *supra*. (67)

#### Job Posting

Job revised and posted at lower salary range — posting proper; grievance dismissed. *Re Domtar Fine Papers & O.P.E.I.U., Local 418; policy grievance,* June 13, 1985. Majority: Weatherhill, Byers; dissent: Quesnel — 8 pages. (68)

#### Lay-Off

Employees given choice of working or staying home — does not constitute lay-off; holiday pay only applies to lay-offs, not leaves of absence; grievances of laid-off employees allowed. *Re A.B.C. Nursery and Kindergarten Ltd. & C.U.P.E., Local 5434; Woodward, Nicodemo, Bereza grievances,* June 20, 1985. Brent — 16 pages. (69)

Entitlement to payment of benefits during lay-off not established — grievance dismissed. *Re Dashwood Industries Limited & United Brotherhood of Carpenters and Joiners, Local 3054; policy grievance,* May 27, 1985. Majority: O'Shea, Addario; dissent: Manson — 17 pages. (70)

Hours of work not reduced before implementation of lay-off — immediate lay-off reasonable; grievance denied. *Re Crown Cork & Seal Canada Ltd. & Graphic Communications Int'l. Union, Local 211; group grievance,* June 17, 1985. Majority: McLaren, Baldwin; dissent: Ashworth — 10 pages. (71)

Qualifications — competitive seniority provision; grievor not as qualified as incumbent; grievance dismissed. *Re Atomic Energy of Canada Limited & P.S.A.C., Local 70376; MacLaren grievance,* June 21, 1985. Kates, Healey, Caron — 8 pages. (72)

Qualifications — grievor failed to establish ability to perform the work which he sought — not entitled to training or familiarization period; grievance dismissed. *Re Neptune Meters Ltd. & U.S.W.A., Local 3813; Galloway grievance,* May, 1985. Gorsky — 21 pages. (73)

Qualifications — union alleged that grievor superior in qualifications to incumbent — not established; grievance denied. *Re Modern Railings and Metalcraft Ltd. & Shopmen's Local 834, International Assoc. of Bridge, Structural and Ornamental Iron Workers; Cancellieri grievance,* June 15, 1985. Dunn — 9 pages. (74)

Temporary employees excluded from lay-off provisions — temporary status for two employees extended by agreement; only one of two grievors achieved permanent status; G. grievance dismissed; M. grievance allowed. *Re Etobicoke, Corp. of the City of & City of Etobicoke Civic Employees, Local 185; Granata and Mazzucco grievances,* May 29, 1985. Devlin — 25 pages. (75)†

Temporary lay-off caused by break-down of equipment — not subject to seniority provisions governing a lay-off caused by an anticipated general division shortage of work; grievance dismissed. *Re Twinpak Inc. & Int'l. Woodworkers, Local 2-233; Cormier grievance,* May 31, 1985. O'Shea — 10 pages. (76)†

Temporary lay-off caused by short-term production problem — not required to be in order of seniority as applicable to lay-off from general division shortage of work; grievance dismissed. *Re Twinpak Inc. & Int'l. Woodworkers, Local 2-233; group grievance.* May 31, 1985. O'Shea — 12 pages. (77)†

#### Overtime

Distribution — agreement silent on what standard to be used in determining relative equality in overtime; grievance denied. *Re Labatt's Ontario Breweries Ltd., London Plant & National Brewery Workers, Local 1; Ewart grievance,* June 13, 1985. Hunter — 9 pages. (78)†

Distribution — employer only obliged to distribute equitably after unable to find employees normally doing work; grievance denied. *Re Westinghouse Canada Inc., Atomic Power Division of Port Hope, Ontario & U.S.W.A., Local 14193; Paeden grievance,* June 14, 1985. Majority: Swan, Kacur; dissent: Wareham — 8 pages. (79)

Distribution — grievor not in the same crew as others selected; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; five grievances.* See (48), *supra*. (80)

Entitlement — departmental distribution of overtime work to take precedence over distribution by classification; grievance dismissed. *Re Timberjack, Division of Eaton Yale Ltd. & Int'l. Molders and Allied Workers, Local 246; grievance of L. Sturdik,* May 31, 1985. Rayner — 6 pages. (81)

Temporary transfer of welder to perform pipefitter's work on overtime basis — senior employee with relatively equal qualifications to junior employee to be selected for transfer; grievance allowed. *Re Eldorado Resources Limited & U.S.W.A., Local 13173; Clarke grievance,* June 12, 1985. Brent — 6 pages. (82)

Voluntariness — overtime voluntary to the extent that there are sufficient volunteers — otherwise obligatory; grievance dismissed. *Re Cadbury Schweppes Powell Inc., Cadbury Division & U.A.W., Local 222; union grievance,* June 6, 1985. Hinnegan — 6 pages. (83)

#### Procedure

Awarding of costs on an adjournment — not appropriate in circumstances. *Re Waverley Hotel, Orchard Park Tavern and Strathcona Hotel & International Beverage Dispensers' and Bartenders' Union, Local 280; union policy grievance,* June 25, 1985. Wilson — 17 pages. (84)†

Referral to Labour Board — arbitration of policy grievance concerning assignment of bargaining unit work to proceed notwithstanding applications pending before Canada Labour Relations Board pursuant to sections 119 and 158 of the Canada Labour Code; interim award. *Re Canada Post Corporation & C.U.P.W.; policy grievance,* June 5, 1985. Burkett — 11 pages. (85)

Representation by counsel — grievor not entitled to separate representation since union has carriage of proceedings as party to collective agreement with employer; interim award. *Re Consumers Distributing Co. Ltd. & Teamsters, Local 419; Persaud grievance,* May 30, 1985. Rayner — 10 pages. (86)

Withdrawal of grievance just prior to hearing — dismissal of grievance appropriate. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; Filipizzi grievance,* June 14, 1985. Weatherill — 6 pages. (87)†



### Promotion

Failure to interview for posted job — grievors not qualified; no duty to interview; grievances dismissed. *Re Precious Plate Limited & Communications Workers of Canada, Local 561; Gutierrez and Singh grievances*, May 30, 1985. Brent — 12 pages. (88)†

Qualifications — absenteeism record a valid criteria — too much weight given to absenteeism record; S. grievance dismissed; J. grievance allowed. *Re Mount Sinai Hospital & O.N.A.; Sklar and Jacob grievances*, May 31, 1985. Foisy — 17 pages. (89)†

Qualifications — bargaining unit applicants not suitable; grievance dismissed. *Re Toronto Star Newspapers Ltd. & Southern Ontario Newspaper Guild; union grievance*, June 3, 1985. Samuels — 7 pages. (90)

Qualifications — decision not based on complete information about relative skill, ability, experience and qualifications of the candidates — matter remitted to employer for fresh competition; grievance allowed. *Re Toronto Western Hospital & O.N.A., Francis-Barrett grievance*, June 6, 1985. Knopf — 23 pages. (91)†

Qualifications — educational equivalent not properly considered — position no longer exists to be awarded; compensation ordered. *Re York University & Canadian Union of Educational Workers; Giblon grievance*, May 31, 1985. Majority: P. Picher, Rogers; dissent: Cowles — 38 pages. (92)

Qualifications — grievor lacking requisite knowledge of technical aspects of position to meet minimum degree of ability to qualify for training; grievance dismissed. *Re Somerville Belkin Industries Limited & O.P.E.I.U., Local 131; Cornwell grievance*, June 12, 1985. Majority: Devlin, Churchill-Smith; dissent: Perrin — 29 pages. (93)

Qualifications — incumbent had the more recent relevant experience in pediatric nursing sought; grievance dismissed. *Re North Bay Hospital Commission, North Bay Civic Hospital & C.U.P.E.; Roy grievance*, June 6, 1985. Duchesneau-McLachlan — 29 pages. (94)†

Qualifications — senior employee refused job based on new requirement in job posting — seniority held to be governing factor and change in qualifications in violation of agreement; remitted to employer for fresh determination. *Re Midland Board of Park Management & O.P.S.E.U., Local 328; individual grievance*, June 21, 1985. Betcherman, Dalrymple, Kaufman — 6 pages. (95)

Requirement to train senior employees asserted by union — not established; grievance denied. *Re Noranda Metal Industries Ltd. (Fergus Division) & I.B.E.W., Local 2345; policy grievance*, June 12, 1985. Verity — 12 pages. (96)†

### Recall

Grievor dropped from active list — not qualified by new criteria; grievance denied. *Re Inco. Ltd. & U.S.W.A.; Bellehumeur grievance*, May 31, 1985. Majority: H.D. Brown, Kort; dissent: Farrell — 11 pages. (97)

### Retirement

Normal retirement age 65 subject to extension only with consent of employer — no such extension granted; normal practice to allow retiring employee to work to end of the month when age 65 reached; grievance dismissed except for compensation to end of month. *Re Victoria Hospital Corporation & O.N.A.; Wherry grievance*, May 28, 1984. E.B. Jolliffe — 23 pages. (98)†

Requirement that accumulated holiday pay be taken as time off prior to retirement — grievor desiring lump sum payment — requirement reasonable; grievance dismissed. *Re Sarnia, Board of Commissioners of Police for the City of & Sarnia Police Association; Wark grievance*. See (60), *supra*. (99)

### Scheduling of Work

Introduction of staggered shifts — tours implemented other than those defined in collective agreement; grievance allowed. *Re Windsor Western Hospital Centre Inc. (Riverview Unit) & O.N.A.; policy grievance*, June 12, 1985. Knopf — 18 pages. (100)†

### Sick Leave

Medical Certificate — college required grievor to provide a certificate for all absences; collective agreement silent — contrary to normal college policy; only proper where evidence of abuse of sick leave; grievance allowed. *Re Northern College & O.P.S.E.U.; Toor grievance*, June 4, 1985. Majority: Brent, Switzman; addendum: Switzman; dissent: Courtney — 17 pages. (101)

### Sick Pay

Entitlement to sick pay after expiry of 'L.T.D.' — grievor still "actively employed"; grievance allowed. *Re Sault Ste. Marie Board of Education & Statutory Members of the Sault Ste. Marie Division O.S.S.T.F./A.E.F.O.; Miller grievance*, June 17, 1985. Majority: Brent, McNail; dissent: Bernardi — 16 pages. (102)

Preservation of credits from predecessor agreement — no provision as to how credits would be used under new agreement; grievance denied. *Re Disabled and Aged Regional Transit System & C.U.P.E., Local 839; policy grievance*, June 13, 1985. Davis — 10 pages. (103)†

### Union Rights

Leave of absence to attend union conference refused — collective agreement does not give employer discretion to refuse permission; refusal improper; grievance allowed. *Re Sunnybrook Hospital & Sunnybrook Hospital Employees, Local 777; policy grievance*, May 30, 1985. Egan — 8 pages. (104)†

Pattern of anti-union activity alleged — not proven; grievance dismissed. *Re Seneca College & O.P.S.E.U.; policy grievance*, May 31, 1985. Swinton, Beaulieu, Brady — 14 pages. (105)

Posting of union notices — items not inflammatory, but informational; grievance allowed. *Re Plainfield Children's Home & S.E.U., Local 183; policy grievance*, June 14, 1985. Emrich — 29 pages. (106)†

Posting of union notices — notice not constituting "political matter"; grievance allowed. *Re Salvation Army Grace Hospital & S.E.U., Local 210; policy grievance*, May 31, 1985. Majority: Burkett, Solberg; dissent: Burnell — 14 pages. (107)\*

### Vacations

Scheduling to be based on departmental seniority and not restricted to each shift — grievance allowed. *Re Consumers Glass Limited & Aluminum, Brick and Glass Workers, Local 220G; union policy grievance*, June 21, 1985. M. Picher — 6 pages. (108)

**Wages**

Acting rank pay — temporary duties those of higher classification; grievances allowed. *Re Sarnia, Board of Commissioners of Police for the City of & Sarnia Police Assoc.; Allen, Johnson and Tremain grievances*. See (60), (99), *supra*. (109)

Calculation of wages following permanent promotion — agreement ambiguous; past practice relied on; “acting rank” provisions applicable to permanent promotions; grievances dismissed. *Re Peterborough Board of Commissioners of Police for the City of & Peterborough Police Assoc.; Sinclair and Selby grievances*, May 23, 1985. M. Picher — 14 pages. (110)

Denial of annual increment — employer can deny if grounds are deficient work performance; grievance dismissed. *Re Toronto, City of & C.U.P.E., Local 79; Auer grievance*, June 21, 1985. M. Picher — 19 pages. (111)

Effect of change from standard to daylight time — prior award required hospital to pay for actual hours worked — inequity resulted from changeover while implementing award; grievance allowed. *Re Port Colborne General Hospital & O.N.A.; policy grievance*, May 17, 1985. Teplitsky, Winkler, Symes — 3 pages. (112)

Entitlement where failure to report because of picket line — grievors made little effort to get to work; grievance denied. *Re University of Ottawa & I.U.O.E., Local 796; group grievance*, June 13, 1985. Frankel — 21 pages. (113)†

Entitlement where time change — payment of hours actually worked notwithstanding time changes in fall and spring; grievance allowed. *Re Port Colborne General Hospital & O.N.A.; group grievance*. May 17, 1985. Majority: Teplitsky, Symes; dissent: Winkler — 3 pages. (114)

Federal elections day entitlement — ‘enforced holidays’ includes election day; grievance allowed. *Re Waverley Hotel, Orchard Park Tavern and Strathcona Hotel & International Beverage Dispensers and Bartenders, Local 280; union policy grievance*. See (84), *supra*. (115)†

Acting pay — grievor performing the central core of the job classification; grievance allowed. *Re Canada Post Corporation & Public Service Alliance; Tallo grievance*, May 14, 1985. Hinnegan — 6 pages. (116)

Calculation of compensation for grievors as Group 1 teaching masters — based on 1/700 of annual salary for each hour taught in excess of the maximum of 20 per week; supplementary award. *Re Seneca College & O.P.S.E.U.; Bell et al grievance*, April 29, 1985. Majority: Brent, Koski; dissent: Marszewski — 17 pages. (117)

Calculation of pay rate increments — based on 260 days worked being equivalent of one year, yielding an increment; grievances allowed. *Re Vernon Nursing Home Services Ltd. (Fairvern Nursing Home) & H.O.P.E., Local 206; group grievance*, April 26, 1985. Samuels; partial dissents: Mustard, Rudrum — 11 pages. (118)

Entitlement — lower rate for “acting rank” payable during initial period following permanent promotion; grievance dismissed. *Re Peterborough, Board of Commissioners of Police for the City of, & Peterborough Police Association; Sinclair and Selby grievance*, May 23, 1985. M.G. Picher — 14 pages. (119)

Implementation of first collective agreement — employer required to pay general increase and also bring employees up to start rate; grievance allowed. *Re Redirack Limited/ Limitee & U.S.W.A.; Palmateer, Atherton grievances*, May 15, 1985. Brent — 10 pages. (120)†

Increase to salary claimed as well as extra travel expenses and overtime pursuant to enlargement of geographical district for which grievors responsible — overtime claims only established; grievances allowed in part. *Re Globe and Mail & Southern Ontario Newspaper Guild; Fontaine and Houston grievances*, May 15, 1985. Majority: Burkett, Correll; dissent: Tate — 22 pages. (121)

Red-circling claimed for employees downgraded pursuant to bumping rights on lay-off — entitlement not established; grievance dismissed. *Re Canadian Broadcasting Corporation & C.U.P.E. (Broadcast Division); grievance D14*; May 15, 1985. M.G. Picher — 9 pages. (122)

**Welfare Plans**

Topping up W.C.B. Benefits to full pay — interim work-sharing agreement reducing 40 hour work week to 32 — lower hours held to be applicable; grievance dismissed. *Re Howe-Richardson Inc. & I.A.M., Lodge 78; Brown grievance*, June 7, 1985. P. Picher, Carrier, Solberg — 15 pages. (123)

O.H.I.P. Premiums — employer alleged that obliged to provide O.H.I.P. coverage only if unavailable from other source — no intention to give employees choice as to which spouse’s employee coverage to use; grievance denied. *Re Hallowell House Ltd. & S.E.U., Local 183; Spring grievance*, May 24, 1985. Thorne — 8 pages. (124)†

Weekly indemnity benefits — grievor entitled to benefits when unable to report for active work following recall because of physical disability; grievance allowed. *Re Lecours Lumber Company Limited & Lumber and Sawmill Workers, Local 2995; grievance of F. Pouliot*, June 5, 1985. Majority: Barton, Lacroix; dissent: Fyshe — 14 pages. (125)

**Work Assignment**

Entitlement to overflow work from another group of employees not established — grievance dismissed. *Re Steetley Industries Ltd. & Teamsters, Local 879; group grievance*, June 7, 1985. Barton — 7 pages. (126)†

Guidelines in agreement as to class size — employer to ‘endeavour’ to meet; strict adherence not required; no violation of agreement; grievance dismissed. *Re Kent County Board of Education & O.S.S.T.F., Board Affiliate; union grievance*, June 20, 1985. Brent — 7 pages. (127)

Performance of bargaining unit work by supervisor alleged — not proven; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; five grievances*. See (48), (80), *supra*. (128)

Shift change — grievor transferred from an eight hour shift to a twelve hour shift — collective agreement silent; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; Bertin grievance, five grievances*. See (48), (80), (128), *supra*. (129)

Arbitrary re-classification alleged — transfer of a small part of the work of one classification to another for legitimate business reasons; grievance denied. *Re Sivaco Ontario, Ingersoll, Ontario, a Division of Avaco Inc. & United Cement, Lime, Gypsum and Allied Workers, Local 527; Hensbeyer grievance*, April 2, 1984. Palmer, Belecky, Werry — 7 pages. (130)



Assignment within classification — explicit language to the contrary the employer may assign the duties of a job classification to members of the classification as it sees fit; grievance denied. *Re Imperial Leaf Tobacco, Division of Amasco Limited & E.C.W.U., Local 10; Glazer grievance*, May 24, 1985. Brandt — 8 pages. (131)

Bargaining unit duties assigned to excluded person — minimal amount assigned; grievance dismissed. *Re Westinghouse Canada Inc. & U.E., Local 555; Hotrum grievance*, March 11, 1985. Majority: Palmer, Kacur; dissent: Krouse — 5 pages. (132)

Full-time assignment to particular machine within classification — precluded from becoming fully qualified; limiting seniority; grievance allowed in part. *Re D.R.G. Stationery Co. & Canadian Paperworkers, Local 1173; individual grievance*, January 31, 1985. Palmer, Arnold, Roberts — 13 pages. (133)

Inventory work — work performed amounted to taking of inventory and not reserved exclusively to unit; grievance dismissed. *Re Massey-Ferguson Industries Ltd. & U.A.W., Local 439; Halas and Cosentine grievances*, May 10, 1985. Solomatenko — 22 pages. (134)†

Non-bargaining unit employees performing bargaining unit work — work incidental to other work performed by non-bargaining unit employees; grievance dismissed. *Re Inco Metals Co. & Canadian Guards Assoc., Local 105; union grievance*, May 7, 1985. Majority: Weatherill, Pigott; dissent: McVey — 12 pages. (135)

Non-unit employee performing bargaining unit work — done to substantial extent; grievance allowed. *Re Westinghouse Canada Inc. & U.E., Local 555; policy grievance*, August 16, 1984. Majority: Palmer, Kacur; dissent: Davidson — 7 pages. (136)

Outside employees hired while employees on lay-off — work never done by member of unit; grievance denied. *Re Sunarhauserman Ltd. & U.S.W.A., Local 3292; policy grievance*, February 25, 1985. Palmer — 8 pages. (137)

Salaried employees performing bargaining unit work — performing supervisory and management duties; grievance dismissed. *Re I.M.C. Blue Mountain Plant & U.S.W.A., Local 5383; union grievance*, May 14, 1984. Palmer — 3 pages. (138)

Summer shutdown work — not bargaining unit work; grievance denied. *Re Benn Iron Foundry Limited & U.A.W.; Hofmans grievance*, July 25, 1985. Palmer — 6 pages. (139)

Union alleged work on 'colour computer' within bargaining unit; grievance withdrawn. *Re Reed Decorative Product Ltd. & Canadian Paperworkers, Local 304; policy grievance*, September 26, 1984. Palmer, Mayer, Weisbach — 2 pages. (140)

Use of part-time employees to perform bargaining unit work — employee not establishing that bargaining unit employees not available or qualified; grievance allowed. *Re Cochrane-Dunlop Ltd. & Teamsters, Local 419; Freud grievance*, May 3, 1985. Davis — 9 pages. (141)†

Unfair evaluation alleged — settlement; grievance withdrawn. *Re Scarborough, Board of Education for the City of & Ontario Secondary School Teachers' Federation; Hofstetter grievance*, May 24, 1985. Kennedy, Wakely, Solberg — 6 pages. (142)

### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of September, 1985.

*Norfolk Hospital Association & L.D.S.W.U., Local 220*; Brown, Filion; addendum: Switzman — 13 pages.

*St. Mary's Hospital, London & L.D.S.W.U., Local 220*; H.D. Brown, Filion; dissent: Robbins — 12 pages.

*Bayview Villa Nursing Home (Extendicare Ltd.) & C.U.P.E., Local 1394*; Black; dissents: McGarva, Robbins — 42 pages.

*St. Raphael's Nursing Home, Durham & L.D.S.W.U., Local 220*; R.J. Roberts, McGarva, Robbins; addendum: Robbins — 23 pages.

*Salvation Army Grace Hospital & O.P.S.E.U., Local 142*; Palmer, Solberg; dissent: Burnell — 12 pages.

*Participating Hospitals & C.U.O.E.*; McLaren, Wakely; partial dissent: Jutras — 29 pages.

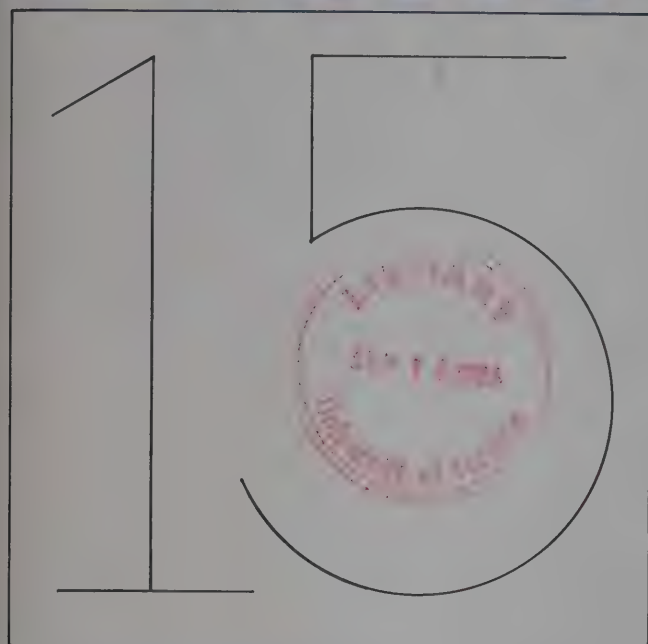
*Sunbeam Home & L.D.S.W.U., Local 220*; H.D. Brown, Robbins; dissent: Carrier — 34 pages.

*Beacon Hill Lodges (Ottawa) & O.N.A.*; V.E. Scott; dissents: Sargeant, Mayne — 15 pages.

*Beacon Hill Lodges (Hamilton) & O.N.A.*; V.E. Scott, Mayne; dissent: Sargeant — 18 pages.

*Nel-Gor Castle Nursing Home (Newcastle) & C.U.P.E., Local 2225*; V.E. Scott, Switzman; dissent: Bernofsky — 27 pages.

# Monthly Bulletin



Ontario Ministry of Labour



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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of July, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Administration of drug insurance plan — company only obligated to purchase such insurance — insurance company not bound by collective agreement; grievance not arbitrable. *Re Noranda Mines Limited (Geco Division) & Canadian Union of Base Metal Workers (CNTU)*; policy grievance. June 19, 1985. O'Shea — 17 pages. (1)



Change to rotating shifts — general allegation of wrongdoing not related to collective agreement; grievance dismissed. *Re Northwestern General Hospital & O.P.S.E.U., Local 564; union grievance*, July 22, 1985. Majority: H.D. Brown, Mustard; dissent: Kaufman — 9 pages. (2)

Exclusion of employees from the bargaining unit — brought forward as a policy grievance — rights of the union affected; grievance arbitrable. *Re Fanshawe College & O.P.S.E.U.; policy grievance*, September 29, 1982. Majority: Palmer, Hatch; dissent: Craven — 25 pages. (3)

Grievance of casual employee; grievor not a member of the bargaining unit — not a policy grievance; grievance not arbitrable. *Re Salvation Army Grace Hospital & O.P.S.E.U., Local 142; Vesco grievance*, June 6, 1985. Majority: Lerner, Burnell; dissent: McManus — 19 pages. (4)

Section 45 — reference to expedited arbitration untimely under collective agreement; grievance dismissed. *Re St. Joseph's Hospital & O.N.A.; policy grievance*, July 23, 1985. Black — 7 pages. (5)†

Waiver — incident arising prior to collective agreement coming into force — waiver does not apply to fundamental issues of jurisdiction; grievance not arbitrable. *Re Woodbridge Foam Corporation & U.A.W., Local 1934; Brar grievance*, July 16, 1985. Knopf — 8 pages. (6)†

#### Bargaining Unit

Casual part-time nurses on temporary assignment to full-time position vacated by nurse on maternity leave — no longer in part-time unit; grievances dismissed. *Re Stratford General Hospital & O.N.A.; policy grievance and Bannan et al grievances*, July 15, 1985. Majority: Swan, MacDermid; dissent: Switzman — 9 pages. (7)

Position of Project Engineer alleged to be within bargaining unit — all positions above rank of Foreman excluded — supervisory duties involved; position excluded; grievance dismissed. *Re Timmins, Corporation of the City of & C.U.P.E., Loc. 434; union grievance*, July 22, 1985. Davis — 7 pages. (8)†

#### Classification

Higher classification sought — job progression scheme — grievor not doing work required under the higher classification; grievance dismissed. *Re Fleet Industries & Frontier Lodge No. 171 of the I.A.M.; Milton grievance*, June 18, 1985. Rayner — 9 pages. (9)

Full-time classification claimed — agreement silent as to required time to be worked to invoke full-time status; grievance dismissed. *Re C.N.I.B. & Canadian Union of Blind and Sighted Merchants, Local 681; Marynuk grievance*, July 15, 1985. Hearn — 4 pages. (10)†

Higher classification claimed — job changes due to amalgamation of departments — no fundamental, functional or major change; grievance dismissed. *Re Thunder Bay, Corporation of the City of & C.U.P.E., Local 87; group grievance*, July 17, 1985. Boscariol — 9 pages. (11)

Improper ranking — grievor employed as a graduate student even though not in a graduate degree program; grievance allowed. *Re Carleton University and C.U.P.E., Loc. 2323; Howard grievance*, July 4, 1985. Majority: Brunner, Head; dissent: Carrier — 13 pages. (12)

#### Collective Agreement

Company rules — customer requiring "no beards" rule reasonable; grievance dismissed. *Re C.H. Heist Ltd. & U.S.W.A., Loc. 8891; Vanderverde, Coles and Rintjema grievances*, June 28, 1985. Wilson — 11 pages. (13)†

#### Contracting Out

Inventory work — normally done by worker-management teams; no prohibition in collective agreement; grievance dismissed. *Re Buntin Gillies & Teamsters, Loc. 879; group grievance*, July 2, 1985. Rose — 14 pages. (14)†

Re-assignment of work to independent contractors — direct impact on job security of bargaining unit employees — not permitted under the collective agreement; grievance allowed. *Re Canadian Broadcasting Corporation & C.U.P.E., Broadcast Division; policy grievance*, July 10, 1985. M. Picher — 25 pages. (15)

#### Damages

Improper failure to recall grievor — calculation of compensation; interest to be calculated in accordance with O.L.R.B. formula. *Re Savage Shoes Limited & Amalgamated Clothing and Textile Workers, Shoe Division; Bartlett grievance*, June 26, 1985. Devlin — 13 pages. (16)

#### Discharge

Absence from work due to jail term — past disciplinary record, grievance dismissed. *Re Reed Decorative Products Limited & Canadian Paperworkers, Loc. 304; Hunter grievance*, July 2, 1985. R. Roberts, Weisbach, Mayer — 17 pages. (17)

Absence without leave; serving jail term — refusal of company to participate in Temporary Absence Program must be in good faith — company acted reasonably; grievance dismissed. *Re Stelco Inc. Hilton Works & U.S.W.A., Loc. 1005; Tecchi grievance*, June 27, 1985. Majority: Brent, Storie; dissent: Marshall — 26 pages. (18)\*

Absenteeism — excessive absence due to medical problems; insufficient grounds at time of discharge; grievor reinstated with benefits but without pay. *Re Scarborough, Corporation of the City of & Scarborough Civic Employees Loc. 368, Brown grievance*, July 22, 1985. Majority: H.D. Brown, Hodges; dissent: Fillion — 20 pages. (19)

Absenteeism — failure to show ability to return to work — grievance dismissed. *Re Surgikos Canada Inc. & United Textile Workers, Local 510; Foss grievance*, July 15, 1985. O'Shea — 15 pages. (20)

Absenteeism — prior record shows pattern of unjustified absenteeism — long service employee involved in alcoholism rehabilitation program — conditional reinstatement. *Re Stelco Fastener & Forging Company, Stelco Inc., Swansea Works & U.S.W.A., Local 3767; Elvins grievance*, July 15, 1985. Majority: McLaren, Taylor; dissent: Storie — 25 pages. (21)

Absenteeism and work performance — no progressive discipline; six-month suspension substituted. *Re Cable Tech Wire Company Ltd. & I.B.E.W.; Graham grievance*, June 28, 1985. Black, Brady, Bell — 12 pages. (22)

Absenteeism due to arthritis — no prior warning — grievor not allowed to return to work — no basis for future inability to attend; grievor reinstated with compensation. *Re Noranda Metal Industries Ltd., Fergus Division & I.B.E.W., Local 2345; Wood grievance*, July 12, 1985. Solomatenko — 22 pages. (23)†

Absenteeism due to illness — onus on employer to prove excessiveness and no reasonable improvement — employer acted prematurely; grievance upheld. *Re National Auto Radio Manufacturing Co. Ltd. & U.A.W., Local 195; Ceschin grievance*, July 6, 1985. E. Jolliffe — 22 pages. (24)†

Assault — employer fails to satisfy evidentiary burden; grievor's version of events found correct; reinstatement with pay. *Re Beacon Hill Lodges of Canada & S.E.U., Loc. 219; Fenton grievance*, July 25, 1985. Carrothers — 19 pages. (25)†

Assault on fellow employee — momentary flare-up; some provocation; reinstatement without compensation. *Re Tridon Ltd. & Tridon Employees; Smith grievance*, July 15, 1985. H.D. Brown — 18 pages. (26)

Assault on patient — ambulance attendant found to have made serious error in judgement; actions incompatible with continuation of employment relationship; grievance dismissed. *Re Thames Valley Ambulance Ltd. & O.P.S.E.U.; Beasley grievance*, June 10, 1985. Majority: Verity, Sargeant; dissent: McManus — 23 pages. (27)

Assault — possession of dangerous weapon and threatening fellow employee with serious harm — attack not provoked; grievance dismissed. *Re Inglis Ltd. & U.S.W.A., Local 2900; Silva grievance*, July 17, 1985. Brandt — 14 pages. (28)†

Attendance offence alleged — conditional reinstatement ordered in accordance with minutes of settlement. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 43; King grievance*, June 11, 1985. Kennedy, Solberg, Hines — 6 pages. (29)

Breach of safety rules — discipline applied progressively — breach serious enough to be 'culminating' incident; grievance dismissed. *Re Square D. Canada Electrical Equipment Inc. & I.B.E.W., Local 1563; Wildgoose grievance*, July 9, 1985. Carrothers — 13 pages. (30)†

Careless work — no previous documentation on performance deficiencies — carelessness not severe enough to warrant discharge; grievor reinstated with compensation and one-month suspension. *Re Goodyear Canada Inc. & United Rubber Workers, Local 232; Aromatario grievance*, July 5, 1985. Kruger — 5 pages. (31)†

Insubordination — grievor argues with supervisor; board considers subject of argument and past record; six-month suspension without pay and personal apology substituted. *Re Nipissing Board of Education & C.U.P.E.; Goulet grievance*, June 26, 1985. M. Picher — 13 pages. (32)

Insubordination and absenteeism — grievor claims illness; insufficient evidence; culminating incident; no evidence of corrective potential; grievance denied. *Re Toronto Star Newspapers Ltd. & Southern Ontario Newspaper Guild, Loc. 87; Dungate grievance*, July 19, 1985. Solomatenko — 13 pages. (33)†

Intoxication at work — poor past record; lack of commitment to rehabilitation; grievance dismissed. *Re Midas Canada Inc. & U.S.W.A., Page grievance*, July 15, 1985. Davis — 11 pages. (34)

Participation in wrongful refusal to accept work assignments when scheduled by company — previous disciplinary incidents minor; past records improperly assessed according to company's system of progressive discipline; reinstatement with partial compensation. *Re Detour Lake Mine & I.U.O.E., Local 793; Kentish grievance*, July 12, 1985. Weatherill — 14 pages. (35)

Procedure — failure to provide a written notice of discharge with reasons not breaching mandatory provision nor vitiating disciplinary actions; interim award. *Re Loblaw's Limited & U.F.C.W.U., Local 1000A; Johnston grievance*, July 15, 1985. H.D. Brown — 17 pages. (36)\*

Procedure: Union steward not present — discharge void; grievance allowed. *Re Saville Food Products Inc. & U.F.C.W.U., Loc. 1105-P; Desmarchais grievance*, July 8, 1985. Brandt — 12 pages. (37)\*†

Prolonged absence from work due to work related injury — failure to respond to employer inquiries — lack of serious inquiries by employer; grievor reinstated without determination of compensation. *Re Canada Post Corporation & Letter Carriers Union; Morgan grievance*, July 22, 1985. E. Jolliffe — 22 pages. (38)

Sabotage of company property, assault and harassment of working employees during strike — agreement by company to reinstate not proven; two of five grievors reinstated with four-month suspensions and orders to pay damages; other three grievances dismissed. *Re Cyanamid Canada Inc. & U.E., Loc. 536; group grievance*, July 8, 1985. Davis — 35 pages. (39)†

Sabotage of plant equipment — alleged resulting loss of production; not proven; six-month suspension without pay or benefits substituted. *Re Toronto Star Newspapers Ltd. & Graphics Communications Union, Loc. N-1; Martin grievance*, July 7, 1985. Baum — 20 pages. (40)

Shift turnover not done properly — past record not proven comparatively bad; discharge excessive; two months' suspension and six months' probation substituted. *Re Ethyl Canada Ltd. & E.C.W.U., Loc. 300; Richardson grievance*, July 23, 1985. Barton — 11 pages. (41)†

Suspension of grievor's driver's licence — licence required for the grievor's job — employer acted reasonably; grievance dismissed. *Re Algoma District Homes for the Aged & C.U.P.E., Loc. 2446; Singleton grievance*, July 23, 1985. Black, Bernardi, Abernot — 6 pages. (42)

Theft from customer — failure to admit theft; dismissal justified; grievance dismissed. *Re Ontario Jockey Club & Hotel and Restaurant Employees' and Bartenders' International Union, Locals 280 and 75; Ramsay grievance*, July 22, 1985. Joyce — 12 pages. (43)†

Theft of company property — grievor sold stolen property; grievance dismissed. *Re Allied Chemical & U.A.W., Loc. 89; Duby grievance*, July 18, 1985. Kruger — 8 pages. (44)

Threatening superiors in the workplace — past disciplinary record relied on; grievance dismissed. *Re Mount Sinai Hospital & S.E.U., Loc. 204; Morrison grievance*, July 19, 1985. Majority: Saltman, Boettcher; dissent: McDonald — 20 pages. (45)

Trespass and vandalizing — grievor intoxicated; no record; damage minor; three-month suspension without pay or benefits substituted. *Re Camco Inc. & U.E., Loc. 550; Rasmussen grievance*, July 1, 1985. Rose — 13 pages. (46)†

Unauthorized leave of absence — denial of leave cannot be re-opened in different proceedings; necessity for leave still pertinent to issue of discharge. *Re Windsor Arms Hotel Ltd. & Food and Service Workers; Crelier grievance*, July 29, 1985. Baum — 16 pages. (47)†



Unauthorized leave of absence — provision to terminate for overstaying leave of absence held inapplicable to unauthorized leave; grievor reinstated without compensation. *Re Custom Trim Ltd. & United Rubber Workers, Local 1090; Elliott grievance*, July 15, 1985. Baum — 15 pages. (48)†

Work performance consistently poor — grievor given multiple warnings; no evidence of ability to improve; grievance dismissed. *Re Parkwood Hospital (Women's Christian Association of London) & L.D.S.W.U., Loc. 220; Menary grievance*, July 26, 1985. Kirkwood — 9 pages. (49)†

#### Discipline

Assault on fellow employee — eight-week suspension unjust and excessive; suspension reduced to one week. *Re Carling O'Keefe Breweries of Canada Ltd. & United Brewery Workers, Loc. 325; Dagenais grievance*, July 25, 1985. MacDowell — 21 pages. (50)

Breach of company rule prohibiting repairmen from monitoring or participating in a customer's conversation — refusal to withdraw from line immediately at request of supervisor — isolated instance — unpremeditated and non-surreptitious intrusion — good prior record; suspension reduced to ten days. *Re Bell Canada & Communications Workers; Mancina grievance*, July 3, 1985. Majority: Burkett, Herbert; dissent: Healy — 19 pages. (51)

Careless workmanship alleged — not proven; grievance allowed. *Re Emrick Plastics Inc. & U.A.W., Loc. 195; Todorovic grievance*, June 28, 1985. Stewart — 9 pages. (52)†

Charting error and insubordination alleged — counselling appropriate to charting error; confrontation with employee in supervisory position only marginally insubordinate; penalty of suspension reduced to balance of shift. *Re Sunnyside Home (Waterloo) & L.D.S.W.U., Local 220; Reeve grievance*, July 15, 1985. Majority: Swan; Hyde; dissent: Switzman — 10 pages. (53)

Delay — employer failing to respond to grievance in timely fashion; delays imposing of discipline; unfair to grievor; grievance allowed. *Re Tonka Corporation Canada Ltd. & Int'l. Molders and Allied Workers; DeAlwis grievance*, June 19, 1985. Teplitsky — 3 pages. (54)

Disciplinary notice — void for vagueness; grievance allowed. *Re Flexpac Products Ltd. & U.A.W., Loc. 222; Hill and Butler grievance*, July 4, 1985. Wilson — 10 pages. (55)†

Insubordination alleged — grievor physically incapable of performing the function in question; no insubordination; grievance allowed. *Re Date Industries Ltd. & International Molders and Allied Workers, Local 29; Oliveira grievance*, July 22, 1985. Samuels — 10 pages. (56)

Insubordination — work now and grieve later principle applied; grievance dismissed. *Re Inglebrook Nursing Home Ltd. & H.O.P.E., Loc. 1976; Gardiner grievance*, July 2, 1985. Majority: R. Roberts, Sergeant; dissent: Rudrum — 12 pages. (57)

Intoxication — grievor reporting to work under influence of alcohol; grievance dismissed. *Re Inco Limited & U.S.W.A., Loc. 6500; Patterson grievance*, July 22, 1985. Majority: Gorsky, Forbes; dissent: Farrell — 9 pages. (58)

Negligence resulting in equipment damage — similar error in judgement on record; suspension appropriate; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Loc. 1005; Wilson grievance*, June 28, 1985. Majority: McLaren, Brady; dissent: Marshall — 8 pages. (59)

Playing cards while on duty — grievor's past record justifies discipline; length of suspension unduly harsh; grievance partially allowed. *Re Canada Post Corporation & C.U.P.W.; Meyer grievance (No. 6 & 7)*, June 26, 1985. P. Picher — 17 pages. (60)

Safety infraction — established; grievor ignores reasonable instructions; past record considered; grievance dismissed. *Re Toronto, Corporation of City of & Metropolitan Toronto Civic Employees, Loc. 43; Aiello grievance*, July 8, 1985. Barrett — 7 pages. (61)†

Sleeping at work — suspension of three days consistent with employer's practice; grievance dismissed. *Re Colgate Palmolive Canada & Teamsters, Local 809; McCulloch grievance*, June 17, 1985. H.D. Brown, Harris, Martin — 17 pages. (62)

Unauthorized absence — abuse of employer allowance of unofficial washroom breaks; employee using to smoke and drink coffee; grievance denied. *Re Canada Post Corporation & C.U.P.W.; Meyer grievance (No. 5)*, June 26, 1985. P. Picher — 14 pages. (63)

Unauthorized absence — employer failing to give sufficient notification of disciplinary interview and adequate instructions; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; Meyer grievance (No. 2)*, June 26, 1985. P. Picher — 17 pages. (64)

Unauthorized absence — employer failing to satisfy burden of proof; insufficient evidence to support allegation of employee whereabouts; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; Meyer grievance, (No. 1)*, June 26, 1985. P. Picher — 13 pages. (65)

Unauthorized Absence — employee taking scheduled break early; fails to show just cause or discrimination; grievance denied. *Re Canada Post Corporation & C.U.P.W.; Meyer grievance (No's. 3 & 4)*, June 26, 1985. P. Picher — 10 pages. (66)

#### Estoppel

Past practice supporting interpretation of collective agreement advanced by employer that only two paid relief periods of fifteen minutes each required for extended tour — Association estopped from taking advantage of employer's reliance on long-standing practice; grievance dismissed. *Re Central Hospital & O.N.A.; policy grievance*, July 10, 1985. Shime, Billings, Paliare — 12 pages. (67)

#### Evidence

Admissibility of polygraph evidence at hearing — evidence admitted. *Re Grandview Lodge, (Corporation of the Regional Municipality of Haldimand-Norfolk) & H.O.P.E., Local 206; Union and Middaugh grievance*, July 3, 1985. Majority: Samuels, Borden; dissent: Rudrum — 22 pages. (68)

#### Grievance Procedure

Referral to arbitration — language prioritizing discharge and suspension cases and requiring prompt and equitable processing not constraining union's discretion to process other grievances on basis other than chronological order; grievance allowed. *Re McDonnell Douglas of Canada Ltd. & U.A.W., Local 673; policy grievance*, July 10, 1985. Burkett — 18 pages. (69)

Timeliness of grievance filing — union had no knowledge of time of occurrence; not unreasonable; grievance arbitrable. *Re Spar Aerospace Ltd. & U.A.W., Loc. 112; policy grievance*, July 23, 1985. Solomatenko — 8 pages. (70)†

Wording of union grievance form — general wording not inappropriate; grievance upheld. *Re York University & York University Staff Association; policy grievance*, July 12, 1985. Devlin — 9 pages. (71)\*†

### Holidays

Shift work — special holidays cannot be revoked from employees absent with cause; collective agreement sets no such conditions; grievance allowed. *Re Sault Ste. Marie Board of Commissioners of Police & Sault Ste. Marie Police Association; policy grievance*, July 9, 1985. M. Picher — 14 pages. (72)

### Holiday Pay

Entitlement — grievor absent on qualifying days as a result of a compensable work-related injury — not within allowable exceptions specified; grievance dismissed. *Re G.B. Wonder Bakeries, London, Ontario & Retail, Wholesale, Bakery and Confectionery Union, Local 461; Henningham grievance*, July 3, 1985. H.D. Brown — 13 pages. (73)

Part-time employees not paid for public holidays — must have worked a certain number of days preceding; no need to have worked holiday; grievance allowed. *Re Metropolitan General Hospital & O.N.A.; union grievance*, July 10, 1985. Majority: Samuels, Herbert; dissent: Burnell — 16 pages. (74)

### Hours of Work

Incorporation of a twelve-hour shift schedule not intended to result in calculation of statutory holiday pay, sick leave credits or vacation pay on basis of twelve hours a day or forty-eight hours a week — grievance dismissed. *Re Michipicoten, Board of Commissioners of Police for the Township of & Michipicoten Township Police Association; policy grievance*, July 10, 1985. Aggarwal — 33 pages. (75)

### Illness

Entitlement to job following absence on Workers' Compensation — job duties essentially the same; job still existing; grievance allowed. *Re FBM Distillery Co. Ltd. & United Brewery Workers, Loc. 304; Grover grievance*, July 19, 1985. Weatherill — 9 pages. (76)

### Interest Arbitration

Determination of salaries — goal of interest arbitration — comparisons with other police forces. *Re Niagara Regional Board of Commissioners of Police & Niagara Regional Police Force Senior Officers Association; 1985 Agreement*, June 18, 1985. Brent — 22 pages. (77)

### Interpretation

Plain meaning — collective agreement wording unambiguous; no need to consider extrinsic evidence; union letter not a prior collateral agreement; grievance allowed. *Re 121571 Canada Inc. & Ontario Taxi Association, R.W.D.S.U., Loc. 1688; policy grievance*, July 25, 1985. Fraser — 11 pages. (78)†

### Job Posting

Interpretation of job posting requirements — employer allowed to specify job classification required and restrict applications accordingly; grievances dismissed. *Re Northern and Central Gas Corporation Ltd. & E.C.W.U., Loc. 38; Orr and Coulas grievances*, July 3, 1985. Simmons — 16 pages. (79)

Procedures apply to all "vacancies" — management cannot abrogate by assigning employees returning from leave; grievance allowed. *Re Niagara, Regional Municipality of & O.N.A., Loc. 39; policy grievance*, June 25, 1985. Barton — 10 pages. (80)†

Refusal to take test — employer not entitled to reject grievor on sole basis that he refused to take a test used to assess the candidates — matter remitted to employer for re-consideration. *Re Denison Mines Limited & U.S.W.A.; Belanger grievance*, June 25, 1985. Teplitsky — 3 pages. (81)

### Job Vacancy

Existence of vacancy established — posting required; grievance allowed. *Re North Bay Civic Hospital & C.U.P.E., Local 2790; policy grievance*, July 10, 1985. Lunney — 9 pages. (82)

Qualifications — grievor not qualified to do the job without training; grievance dismissed. *Re Emco Plastics & U.S.W.A., Loc. 14873; Scott grievance*, June 27, 1985. Brent — 14 pages. (83)

### Lay-Off

Abolition of position — lay-off after unsuccessful trial in other position — qualification overrides seniority; grievance dismissed. *Re Skyline Hotel & Hotel, Clubs, Restaurant and Tavern Employees, Local 261; Princi grievance*, July 16, 1985. Pyle — 30 pages. (84)†

Bumping rights — no right to bump, since grievor offered transfer at same level; grievance dismissed. *Re Atomic Energy of Canada Limited & Society of Professional Engineers and Associates; Sisak grievance*, June 28, 1985. M. Picher, Healy, Posen — 18 pages. (85)

New system of work delegation — claim of unjust layoff; conforms with recently negotiated provision in collective agreement; no contradiction with other sections; grievance dismissed. *Re Ross Memorial Hospital & C.U.P.E., Loc. 1909; Harrison, Hood grievance*, July 29, 1985. Baum — 10 pages. (86)†

Qualifications — new employee trained for senior position prior to lay-off; management justified as grievor had refused training; grievance dismissed. *Re Flexpac Products Ltd. & U.A.W., Loc. 222; Hill and Butler grievance*, July 4, 1985. Wilson — 10 pages. (87)†

Qualifications — special skills of junior employee not used; unpredictability of business justified retention; grievance dismissed. *Re Colonial Cookies & U.F.C.W.U., Loc. 617P; Inman grievance*, July 4, 1985. Devlin — 10 pages. (88)†

'Bumping rights' — acceptance of transfer with no loss of time — 'bumping' cannot be invoked; grievance dismissed. *Re Family and Children's Services of the District of Thunder Bay & C.U.P.E., Local 2296; Shlapski grievance*, June 12, 1985. Eaton — 30 pages. (89)†

### Leave of Absence

Calculation of annual leave — platoon officers to receive fifteen full days' leave in addition to their normal annual leave; not tied to specific number of extra shifts worked; grievance allowed. *Re Sault Ste. Marie Board of Commissioners of Police & Sault Ste. Marie Police Association; policy grievance*, July 9, 1985. M.G. Picher — 14 pages. (90)



### Legal Fees

Payment of legal fees of police officer charged with disciplinary offences under the Police Act — offences not committed during execution of his duty, grievance dismissed. *Re Waterloo, Regional Board of Commissioners of Police & Waterloo Regional Police Association; Hopiavuroi grievance*, July 23, 1985. Weatherill — 6 pages. (91)

### Management Rights

Medication errors policy — certain aspects of policy unreasonable. *Re Campbellford Memorial Hospital & O.N.A.; policy grievance*, June 14, 1985. Lunney, Pearlman, Beaulieu — 20 pages. (92)

### Overtime

Determination of correct overtime rate to be applied — current practice in accordance with collective agreement; grievance dismissed. *Re I.K.O. Industries Limited & U.S.W.A.; group grievance*, July 18, 1985. O'Shea — 9 pages. (93)

Distribution — employee who 'normally performs' job not called; grievance allowed. *Re Kralinator Filters Division of Sheller-Globe of Canada Ltd. & U.S.W.A., Local 4605; Pellizzari grievance*, July 17, 1985. Weatherill — 7 pages. (94)

Distribution to be "as equitable as possible" — declaration given but compensation to grievor refused; grievance allowed in part. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Loc. 43; Sneyd grievance*, June 21, 1985. Solomatenko — 14 pages. (95)†

### Premium Pay

Application for increment for exceptional work — same committee members sit at appeal stage; evidence supported increment awarded; increment awarded. *Re Board of Governors of Laurentian University & Faculty Association; Ganjavi grievance*, July 14, 1985. Duchesneau-McLachlan — 13 pages. (96)†

Pyramiding — call-in hours prior to start of shift not to be included to calculate entitlement to overtime — provisions for call-in separate from overtime entitlement; grievance dismissed. *Re Monarch Fine Foods Co. Ltd. & Milk and Bread Drivers, Local 647; De Bartok grievance*, July 5, 1985. Solomatenko — 14 pages. (97)†

Weekend premium — applies to shifts worked on Saturday or Sunday; no need to work both days; grievance allowed. *Re St. Lawrence Lodge & O.N.A.; Pearse grievance*, July 29, 1985. Majority: Swan, Gordon; dissent: Kelley — 9 pages. (98)

### Probationary Employee

Calculation of probationary period — total number of working days actually worked — grievor still a probationary employee; grievance dismissed. *Re United Auto Workers, Loc. 222 & U.A.W.; Loc. 1136; Larkin grievance*, July 2, 1985. Hinnegan — 5 pages. (99)

Probationary period — refers to days actually worked; no need to be exactly eight-hour days or worked continuously; grievance allowed. *Re Fiberglas Reinforced Plastics Systems & Sheet Metal Workers, Loc. 397; policy grievance*, June 28, 1985. Phillips — 3 pages. (100)

### Procedure

Adjournment — theft of company property alleged — suspension pending further investigation — agreement to adjourn *sine die* until disposition of criminal charges. *Re Great Atlantic and Pacific Company of Canada Limited & U.F.C.W.U., Locals 175 and 633; Vechiola grievance*, June 17, 1985. O'Shea — 3 pages. (101)†

Particulars — information requested by union not constituting "particulars"; adjournment denied. *Re Consumers Distributing Company Limited & Teamsters, Loc. 419; Harte grievance*, June 27, 1985. O'Shea — 8 pages. (102)\*†

Attempted withdrawal of grievance at the last minute — abuse of grievance procedure; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Loc. 1967; Ferreira grievance*, July 2, 1985. Egan — 7 pages. (103)†

### Promotion

Application made after position filled — position no longer vacant; grievance dismissed. *Re C.N.I.B. & Canadian Union of Blind and Sighted Merchants; Richard grievance*, June 26, 1985. Duchesneau-McLachlan — 5 pages. (104)†

Disciplinary demotion — not bar to promotion — employer did not fully consider grievor; grievor awarded position. *Re Chedoke-McMaster Hospitals & C.U.P.E., Local 839; Bertin grievance*, July 14, 1985. Rose — 28 pages. (105)†

Educational qualification set as a reasonable requirement — grievor lacking requisite formal education — arbitrator not entitled to require management to accept practical experience in lieu of the requirement; grievances dismissed. *Re St. Catharines General Hospital & S.E.U., Local 204; Overholt and McLean grievances*, January 30, 1984. Teplitsky, Storie, Beaulieu — 10 pages. (106)\*

Qualifications — collective agreement ambiguous — incumbent met qualifications established by past practice of the parties; grievance dismissed. *Re Spar Aerospace Limited & U.A.W., Loc. 112; policy grievance*, July 19, 1985. O'Shea — 14 pages. (107)

Qualifications — employer decision that no applicant qualified unreasonable; matter remitted to employer. *Re Barrie, Corporation of the City of & C.U.P.E., Loc. 2380; Cline grievance*, June 28, 1985. Knopf — 17 pages. (108)

Qualifications — employer evaluation reasonable; grievance dismissed. *Re Nipigon-Red Rock Board of Education & S.E.I.U., Loc. 268; Robinson grievance*, June 28, 1985. Aggarwal — 32 pages. (109)†

Qualifications — graduation from recognized program in adult therapeutic recreation may not be set as condition precedent; grievance allowed. *Re Hamilton-Wentworth, Regional Municipality of & C.U.P.E., Local 167; Thompson grievance*, June 25, 1985. Teplitsky — 2 pages. (110)

Qualifications — grievor fails to show equality in skill and ability; seniority bypassed; grievance dismissed. *Re Shell Canada Ltd. & E.C.W.U., Loc. 848; Stutchbury grievance*, July 10, 1985. Majority: Samuels, Billings; dissent: van Rassel — 10 pages. (111)

Qualifications — grievor's qualifications not approximately equal to incumbent's; grievance dismissed. *Re Sunarhauserman Limited & U.S.W.A., Loc. 7657; Allard grievance*, June 21, 1985. O'Shea — 12 pages. (112)

Qualifications — improper employer assessment of grievor's physical ability; grievance allowed, grievor awarded position. *Re W. Ralston (Canada) Inc. & E.C.W.U., Local 819; Sihvonen grievance*, July 10, 1985. Egan — 14 pages. (113)†

Qualifications — incumbent more qualified; grievance dismissed. *Re Children's Aid Society of Metropolitan Toronto & C.U.P.E., Loc. 2316; Travers grievance*, July 5, 1985. Kruger — 7 pages. (114)†

Qualifications — mandatory educational equivalency improperly assessed by employer; grievance allowed; position awarded to more senior of two grievors. *Re West Nipissing Home for the Aged & C.U.P.E. Local 896; Labelle and Robichaud grievance*, July 9, 1985. Duchesneau-McLachlan — 9 pages. (115)

Qualifications — objection by grievor to interview technique — employer discretion to judge qualifications through interview — grievor not participating held to be fatal; grievance dismissed. *Re Family and Children's Services of the District of Thunder Bay & C.U.P.E., Local 2296; Smith grievance*, July 5, 1985. Eaton — 52 pages. (116)†

Qualifications — only the incumbent properly qualified by having completed all four phases of training program; grievance dismissed. *Re Gulf Canada Products Company & E.C.W.U.; Eckstein and Ancona grievances*, June 20, 1985. Rayner — 21 pages. (117)

Qualifications — successful applicants less senior; collective agreement sets criteria and allows employer discretion; no discrimination or bad faith; grievance dismissed. *Re Kingston General Hospital & C.U.P.E., Loc. 1974; Pollock, Newmann grievance*, July 24, 1985. Draper — 6 pages. (118)†

Vacancy filled by demotion into bargaining unit for employee development — demotion bona fide; grievance dismissed. *Re Bell Canada & Communications Workers of Canada; Dowdall grievance*, July 12, 1985. Majority: M. Picher, Filion; dissent: Switzman — 17 pages. (119)

#### Recall

Similar seniority dates — employer acted reasonably; grievance dismissed. *Re Lloyd-Truax Limited & United Brotherhood of Carpenters and Joiners, Loc. 3054; Cronkwright grievance*, June 25, 1985. R.J. Roberts — 15 pages. (120)†

#### Seniority

Laid off workers from full-time bargaining unit hired into part-time bargaining unit — seniority date is date of original hire into full-time unit; grievance allowed. *Re Nel-Gor Castle Nursing Home & London and District Service Workers' Union, Loc. 220; policy grievance*, June 27, 1985. Majority: Samuels, Switzman; dissent: Wearing — 18 pages. (121)

Reduction of seniority under terms of settlement — no entitlement to move into former job when seniority restored; grievance dismissed. *Re Intercraft Industries of Canada Ltd. & United Brotherhood of Carpenters and Joiners; Barrett grievance*, July 3, 1985. Egan — 8 pages. (122)†

Service outside of bargaining unit — previous employment outside of unit is not included in seniority calculation — seniority date is date of commencing work in the unit; grievance dismissed. *Re Dupont Canada Inc. & Kingston Independent Nylon Workers; Andrews grievance*, June 25, 1985. Majority: O'Shea; addendum: Church; dissent: Redford — 25 pages. (123)\*

#### Sick Leave

Payment of accumulated sick leave benefits — refusal of Ministry to fund but collective agreement clear; grievance allowed. *Re Royal City Ambulance Service & O.P.S.E.U., Loc. 231; group grievance*, July 22, 1985. Verity — 17 pages. (124)

#### Sick Pay

Reinstatement without compensation but with no loss of benefits — grievor not entitled to accumulate sick pay during period of disciplinary suspension; grievance dismissed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Loc. 79; Lewkowicz grievance*, June 26, 1985. Majority: P. Picher, Beresford; dissent: McDonald — 16 pages. (125)

#### Transfer

Entitlement to consideration — grievor failed to file his application for transfer to full-time status so as to qualify for job to which seniority provisions apply; grievance dismissed. *Re The Great Atlantic and Pacific Co. of Canada Limited & R.W.D.S.U., Local 414; Biasiucci grievance*, July 15, 1985. Majority: Kennedy, Baldwin; dissent: Dahmer — 13 pages. (126)

#### Union Rights

Discretion to decide manner and order of processing grievances to arbitration — language prioritizing discharge and long suspension cases and requiring prompt and equitable processing not constraining union's right to process other grievances on basis other than chronological order; grievance allowed. *Re McDonnell Douglas of Canada Ltd. & U.A.W. Local 673; policy grievance*. See (69), *supra*. (127)

#### Vacations

Calculation: employees required to take vacations during time in which plant shut down — vacation time must be in one week blocks; additional days off due to shutdown cannot be unilaterally classified as vacation time; grievance allowed. *Re Canadian Mist Distillers Limited & Brewery, Malt and Soft Drink Workers, Loc. 304; union grievance*, July 18, 1985. R. Roberts — 8 pages. (128)†

Entitlement — specific language required if vacation is to continue to accrue when employee absent with compensable work-related injury; grievance dismissed. *Re Hotel Dieu Hospital, St. Catharines & O.N.A.; Kramer grievance*, July 16, 1985. Majority: Knopf, Thorup; dissent: Switzman — 25 pages. (129)

Rescheduling — employer not entitled to revert to old vacation schedule without consultation with affected employee in circumstances where employer had voluntarily agreed to reschedule and had communicated this to grievor; grievance allowed. *Re Greater Niagara General Hospital & S.E.U., Local 204; Anderson grievance*, July 11, 1985. Majority: Burkett, McDonald; dissent: Redford — 18 pages. (130)



Scheduling — denial of vacations in July and August — general policy violating collective agreement; grievance allowed in part. *Re Canadian Cannery Ltd. & U.F.C.W., Local 596*; union grievance, July 9, 1985. Gandz — 20 pages. (131)†

Scheduling — department-wide preference to apply unless inconsistent with administrative requirements; grievance allowed in part. *Re Windsor Western Hospital Centre Inc. (Riverview Unit) & S.E.U., Local 210*; union grievance, July 8, 1985. R. Roberts — 13 pages. (132)†

#### Wages

Fold-in of COLA adjustment to standard hourly wage rates — required by wording of agreement; grievance allowed. *Re American Can Canada Inc. & U.S.W.A., Local 8995*; policy grievance, July 10, 1985. Davis — 7 pages. (133)†

Recognition of skills and experience acquired outside company — witness admits possibility of different understandings; grievance dismissed. *Re Intercheques & Graphic Communications Int'l Union, Loc. 500M*; Clark grievance, July 3, 1985. Majority: Saltman Furlong; dissent: Ashworth — 15 pages. (134)

Salary grid — increment frozen in 1984 — service during 1984 to be included in calculation of increment in 1985; grievance allowed. *Re Oxford County Board of Health & O.N.A.*; union grievance, July 2, 1985. Verity — 9 pages. (135)†

#### Welfare Plans

Long term disability plan — grievor not capable of working due to psychogenic reasons; reinstated to long term disability plan. *Re Dominion Stores Limited and R.W.D.S.U. Loc. 414*; Figliomeni grievance, July 24, 1985. Majority: Kennedy, Solberg; dissent: Blair — 30 pages. (136)\*

Disability benefits — extended disability benefits properly ended; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited & U.A.W., Loc. 112*; Galus grievance, June 19, 1985. Rayner — 6 pages. (137)

#### Work Assignment

Bargaining unit work assigned to supervisory personnel during lay off — breach of collective agreement in two of three jobs; grievance allowed in part. *Re Rexwood Products Limited & Lumber and Sawmill Workers, Loc. 2995*; policy grievance, May 31, 1985. Majority: Lunney; dissent in part: Wadge, Fyshe — 7 pages. (138)

Grandfather clause — employee loses protection of grandfather clause once he voluntarily transfers out of the protected classification; grievance dismissed. *Re Ferranti-Packard Transformers Ltd. & U.S.W.A., Loc. 5788*; Baird grievance, July 23, 1985. Black — 12 pages. (139)†

Inequitable work load alleged — factors other than total teaching hours considered — work load fair; grievance dismissed. *Re Centennial College & O.P.S.E.U., Souery grievance*, January 21, 1984. Majority: Palmer, Beaulieu; dissent: Beaudoin — 15 pages. (140)

New equipment — no evidence of change in working conditions; no breach of collective agreement; grievance dismissed. *Re Toronto Transit Commission & A.T.U., Loc. 113*; union grievance, June 18, 1985. Teplitsky, Ubels, Beaulieu — 5 pages. (141)

Overtime on special project claimed — not bargaining unit work; not covered by collective agreement; grievance dismissed. *Re Humber College & O.P.S.E.U.*; Anderson grievance, July 25, 1985. H.D. Brown, Kaufman, Shields — 13 pages. (142)

Preference in shift assignment — seniority not applicable; grievance denied. *Re Black Clawson-Kennedy Ltd. & U.S.W.A. Local 2469*; Healy and Christie grievance, July 15, 1985. Rose — 11 pages. (143)†

Work of higher classification performed plus higher wage rate paid — agreement allowed more difficult work to be performed if higher wage rate paid; grievance dismissed. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W.; Loc. 112*; policy grievance, June 19, 1985. Rayner — 8 pages. (144)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of October, 1985.

*Cedar Crest Nursing Home & H.O.P.E., Local 206*; Betcherman; dissents: Valin, Beaulieu — 10 pages.

*Central Hospital & S.E.I.U., Local 204*; McKechnie; partial dissents: McDermott, Solberg — 17 pages.

*St. Vincent Hospital & Assoc. of Allied Health Professionals, Ontario*; Betcherman; dissents: Stansel, McKellar — 12 pages.

*Victoria Manor (Corporation of County of Victoria) & C.U.P.E., Local 1167*; H.D. Brown, Ellis; partial dissent: Robbins — 15 pages.

*Willows Estate Nursing Home & C.U.P.E., Local 2863*; Baum, Graham, Robbins — 3 pages.

*Ottawa Civic Hospital & I.U.O.E., Local 796*; O'Shea, Mustard, Ball — 9 pages.

*The Pines (District of Muskoka) & O.N.A. (Part-time)*; Burkett, Ballantyne; dissent: Billings — 8 pages.

*St. Raphael's Nursing Home & S.E.I.U., Local 204*; Betcherman, Solberg; addendum and partial dissent: Valin — 6 pages.

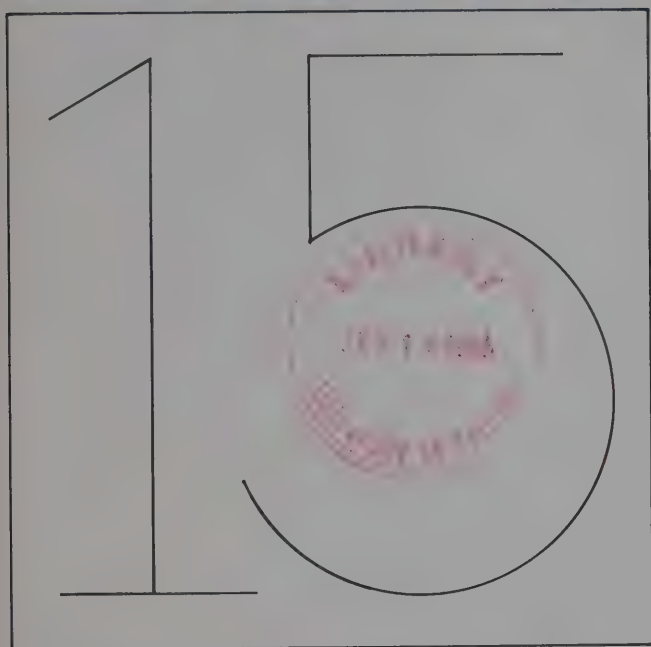
*Windsor Hospitals (Metropolitan General, Salvation Army Grace, Hotel Dieu, Windsor Western — I.O.D.E., Windsor Western — Riverview) & S.E.U., Local 210*; McKechnie, Burnell, Solberg; addendum: Solberg — 14 pages.

*Hotel Dieu of Kingston & O.P.S.E.U.*; McCaughey, Beaulieu; partial dissent: Asselstine — 24 pages.

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# Monthly Bulletin



Ontario Ministry of Labour

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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of August, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Calculation of Long-Term Disability Benefits — insurance plan not part of collective agreement; Board has no jurisdiction to determine if retroactive wage increase applicable. *Re Mohawk College & O.P.S.E.U.; MacKay grievance*, April 29, 1985. Majority: Palmer, Correlli; dissent: Kaufman — 18 pages. (1)

Grievor no longer employee — still a useful purpose in arbitration of issue; grievance arbitrable. *Re Rainy River Valley Health Care & O.N.A.; Attrux grievance*, August 14, 1985. Majority: Devlin, Mayne; dissent: Walsh — 20 pages. (2)\*



Previous grievance on same issue; res judicata alleged — new grievor and allegation; grievance arbitrable. *Re Rainy River Valley Health Care & O.N.A.; union grievance.* See (2), *supra*. (3)\*

Request to reconvene — allegation of new facts; not concerning implementation of earlier award; no jurisdiction. *Re Camco Inc. & U.S.W.A., Local 3129; Pereira grievance,* August 22, 1985. Baum — 10 pages. (4)

Section 45 — grievance procedure exhausted; grievance arbitrable. *Re Laurentian University & Laurentian University Faculty Association; Wilson grievance,* July 31, 1985. Davis — 5 pages. (5)†

Settlement alleged; union's failure to respond to employer's suggestion on job security did not amount to a representation — union not estopped from raising the issue of job security; jurisdiction granted. *Re Loblaw's Supermarkets Ltd. & U.F.C.W., Local 486; union grievance,* August 14, 1985. Thorne — 13 pages. (6)†

Transfer for punitive reasons — not covered by a specific provision of the collective agreement; arbitrator lacking jurisdiction; grievances dismissed. *Re Ottawa Board of Commissioners of Police & Ottawa Police Association; group grievance,* August 9, 1985. Barton — 8 pages. (7) 8 pages. (7)

Withdrawal of grievance during contract negotiations alleged to constitute settlement of issue — not established in context of "eleventh hour" contract negotiations; grievance arbitrable. *Re Emhart Canada Ltd., Hill Refrigeration Division & U.S.W.A., Local 6547; Noble and Wright grievances,* July 23, 1985. Carter — 5 pages. (8)

#### Bargaining Unit

Foreman position removed from bargaining unit — employer onus to show added supervisory sufficient for change; grievance allowed, position ordered into unit. *Re St. Mary's Paper Inc. & Canadian Paperworkers, Local 67; policy grievance,* August 12, 1985. Devlin, Dixon, Paxton — 13 pages. (9)

Limousine drivers — within scope of agreement as employees; grievance arbitrable. *Re 121571 Canada Inc. & R.W.D.S.U., Ontario Taxi Association, Local 1688; policy grievance,* August 2, 1985. Fraser — 16 pages. (10)†

#### Call-Out Pay

Entitlement — collective agreement restricts the call-out provision of imposing a "two trip" rule; grievance dismissed. *Re Welland Hydro-Electric Commission & I.B.E.W., Local 636; group grievance,* August 24, 1985. Welling — 8 pages. (11)†

#### Classification

Higher classification as clerk 3 claimed — issue not moot although grievor paid at rate of classification claimed following reorganization — duties described more appropriate to clerk 2 classification; grievance dismissed. *Re Fanshawe College & O.P.S.E.U.; Cousins grievance,* August 1, 1985. Majority: Brent, Hoddle; partial dissent: Herbert — 14 pages. (12)

Higher classification claimed — work found to be within job description of current rating; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Tomada grievance,* August 6, 1985. M. Picher — 11 pages. (13)

Relief employees — collective agreement clear; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Local 1000; policy grievance,* August 14, 1985. Majority: Kates, Abbott; dissent: Vincier — 12 pages. (14)

#### Clothing Allowance

Deduction of income tax from contractual clothing allowance — agreement provision does not allow for deduction; grievance allowed, no money damages awarded since issue before Revenue Canada. *Re Timmins, Board of Commissioners of Police for the City of & Timmins Police Association; policy grievance,* July 22, 1985. Joyce — 13 pages. (15)

Entitlement — employer not requiring employees to wear prescription safety glasses during course of work; grievances dismissed. *Re Emhart Canada Ltd., Hill Refrigeration Division & U.S.W.A., Local 6547; Noble and Wright grievances.* See (8) *supra*. (16)

Uniforms supplied — claim for laundering and ironing as included in obligation to supply — not established — supply meaning "furnish"; grievance dismissed. *Re St. Joseph's Hospital, London & London and District Service Workers Union, Local 220 (Service Unit); policy grievance,* July 30, 1985. McLaren, Coups, McDonald — 9 pages. (17)

#### Discharge

Ability to perform work because of illness — unable to perform work; past settlement satisfied; discharge allowed; grievance dismissed. *Re Donlee Plastics Ltd. & Amalgamated Clothing and Textile Workers, Local 1813; Williams grievance,* August 21, 1985. Majority: Brent, Heather; dissent: Clark — 7 pages. (18)

Absence without leave; failure to notify employer on time — same ambiguity in previous warning; benefit of doubt must go to grievor; work record reviewed; reinstatement without loss of seniority but without compensation substituted. *Re Noranda Mines, Geco Division & Canadian Union of Base Metal Workers; King grievance,* August 26, 1985. Brown — 17 pages. (19)

Absence without notice — employer not establishing that grievor medically fit to work; grievance allowed; reinstatement with full compensation. *Re Merit Manufacturing Ltd. & U.A.W., Local 195; Desha's grievance,* June 24, 1985. Palmer — 10 pages. (20)

Absence without notice; failure to notify employer on time — no actual inconvenience caused; work record reviewed; reinstatement without loss of seniority but without compensation substituted. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; Roy grievance,* August 16, 1985. O'Shea — 16 pages. (21)

Absenteeism — excessive during one year period of employment; regular attendance in the future unlikely; grievance dismissed. *Re Gananoque Plastics Corporation & U.S.W.A., Local 3209; Wyborn grievance,* August 14, 1985. Emrich — 14 pages. (22)†

Absenteeism — grievor warned and put on six-month assessment; further absences due to allergy; no indication of improvement in condition or attendance; grievance dismissed. *Re Pamour Porcupine Mines Ltd. & U.S.W.A., Local 4440; Hansen grievance,* June 19, 1985. Palmer — 7 pages. (23)

Alcoholism — long service employee undergoing rehabilitation — conditional reinstatement. *Re Gilbey Canada Limited & Teamsters, Local 938; Rainey grievance,* August 1, 1985. Majority: MacDowell, Lefort; dissent: Redford — 17 pages. (24)

Alcohol on company property — company not proving possession by employee; reinstatement with full compensation. *Re Stelco & U.S.W.A., Local 100; Latner grievance,* August 2, 1985. Kruger — 11 pages. (25)†

Culminating incident; leaving job site without notice — penalty reasonable; insufficient evidence of emergency; grievances dismissed. *Re A.G. Simpson Co. Ltd. & Simpson Plant Council; Wannamaker and Twaddel grievances*, August 16, 1985. Kirkwood, Worboy, Gilfillan — 7 pages. (26)

Culminating incident — long disciplinary history including previous termination and reinstatement and current disciplinary offences constituting just cause; grievance dismissed. *Re Commodore Business Machines Limited & U.S.W.A., Local 6269; Lewis grievance*, August 6, 1985. Hinnegan — 8 pages. (27)

Culminating incident; poor work performance — incidents occurring over short period; (prior work record good); management's motives slightly suspicious; reinstatement without compensation. *Re Loomis Courier Services Ltd. & Association of Ontario Loomis Drivers; Letang grievance*, August 14, 1985. Kates — 15 pages. (28)

Culminating incident — prank resulting in injury to another; alcoholism mitigates; rehabilitation prospects good; conditional reinstatement without compensation substituted. *Re Labatt's Ontario Breweries & Brewery Workers, Local 304; Stuhr grievance*, August 21, 1985. Brandt — 12 pages. (29)

Culminating incident — previous record not documented — no cause established for culminating incident; grievance allowed; grievor reinstated with full compensation and three-month conditional of prompt attendance. *Re General Motors of Canada Ltd. & U.A.W., Local 222; Thornton grievance*, February 22, 1985. Palmer — 7 pages. (30)

Failure to pass apprenticeship courses — courses required to complete apprenticeship programme; company not responsible for act of College which failed grievor; grievance dismissed. *Re Abitibi-Price Inc. & I.B.E.W., Lefebvre grievance*, July 29, 1985. Majority: Kruger, Carpenter; dissent: Farrell — 7 pages. (31)

Incarceration during period of illness not just cause — charges arising outside employment not cause; reinstatement with full compensation. *Re C.A.E. Diecast Ltd., & I.A.M.A.W., Local 2719; Embury grievance*, August 7, 1985. Baum — 12 pages. (32)†

Incompetence alleged — failure to maintain proper level of cash register accuracy — not established; discharge disciplinary; short-comings attributable to corrigible behaviour; one-week suspension substituted. *Re Steinberg Incorporated & U.F.C.W., Local 486; Longtin and Piteau-Reid grievances*, July 30, 1985. Frankel — 26 pages. (33)†

Loss of control and abusive language — employee undertook no medical/psychological treatment; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; Gauthier grievance*, July 24, 1985. Brunner — 14 pages. (34)

Negligence — fire on board ship; grievor responsible and reacting poorly; lack of contrition and gravity of potential consequences considered; grievance dismissed. *Re ULS International Inc. & Canadian Maritime Union, Local 401, Canadian Brotherhood of Railway Transport and General Workers; Quesnelle grievance*, August 20, 1985. O'Shea — 11 pages. (35)

Physical abuse of patient — mitigating circumstances due to grievor's emotional trauma from marriage breakdown; four-month suspension substituted. *Re Elisabeth Bruyere Health Centre & C.U.P.E., Local 1657; Godding grievance*, August 22, 1985. England — 18 pages. (36)†

Physical incapacity to perform the job — reinstatement ordered on the condition grievor medically able to perform normal duties of a R.N. *Re Toronto East General Hospital & O.N.A.; Gallagher grievance*, August 22, 1985. Baum — 12 pages. (37)

Poor driving records — seven employees discharged; four reasonable as company unable to insure; three reinstated with compensation. *Re Atlantis Transportation Services Inc. & Canadian Brotherhood of Railway, Transport and General Workers; union grievance*, August 22, 1985. Teplitsky — 3 pages. (38)

Prank involving theft of another employee's property — not planned and deliberate — not sufficient misconduct for discharge; grievance allowed; four-month suspension substituted. *Re Standard Tube Canada Inc. & U.A.W., Local 1965; Campbell grievance*, July 31, 1985. E.B. Jolliffe — 11 pages. (39)†

Safety rule infraction — poor past record with seven safety violations; progressive discipline applied; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Marier grievance*, July 24, 1985. Brunner — 9 pages. (40)

Sleeping in and failing to call in his absence — alarm clock failed — no culminating incident established; grievance allowed. *Re Domglas Inc. & Aluminum, Brick and Glass Workers, Local 203G; Stewart grievance*, July 26, 1985. Gandz — 10 pages. (41)†

Theft — deliberate and repeated pattern of theft; amount of goods stolen not insignificantly small; short period of service; grievance dismissed. *Re Corning Canada Incorporated & Canadian Brewery Workers, Local 304; Vu grievance*, July 26, 1985. M.G. Picher — 12 pages. (42)

Theft alleged — grievor consuming company food during work; isolated incident; reinstatement without compensation. *Re Levi's I.G.A. & R.W.D.S.U., Local 431; Manuel grievance*, August 19, 1985. Joyce — 11 pages. (43)†

Theft of company property — grievor transferred and given second chance after initial theft; caught second time by detective and charged; grievance dismissed. *Re ITT Aimco Division of St. Catharines & U.A.W., Local 199; Parent grievance*, March 1, 1985. Palmer — 7 pages. (44)

Theft of employer's property — guilty in criminal court to charge of theft under \$200; employment relationship effectively eroded; grievance dismissed. *Re Toronto Western Hospital & C.U.P.E., Local 1744; Bygrave grievance*, August 15, 1985. Baum — 12 pages. (45)†

Work performance — grievor's work as a plumber proved to be below average standards; grievance dismissed. *Re Toronto Western Hospital & C.U.P.E., Local 1744; Mulholland grievance*, August 23, 1985. Barrett — 12 pages. (46)†

Work performance — lack of competence of employee with twenty-two years service established; grievance dismissed. *Re Top Hat Pant & Toronto Joint Board, Amalgamated Clothing and Textile Workers; Protomanni grievance*, August 20, 1985. Dunn — 4 pages. (47)

Work performance — negligent driving of tractor trailer; grievor ignorant of condition of load; grievance allowed. *Re Boise Cascade Canada Limited & United Paperworkers, Local 92; Krawchuk grievance*, August 19, 1985. Davis — 9 pages. (48)†



**Discipline**

Absenteeism and lateness — no convincing proof by employee of mitigating circumstances; grievance dismissed. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Local 112; Vassell grievance*, June 8, 1985. Palmer — 5 pages. (49)

Absenteeism and verbal abuse to supervisor — grievor legitimately ill and first suspension unwarranted; verbal abuse over the telephone proved; grievance allowed in part. *Re St. Catharines Transit Commission & A.T.U., Local 846; Hopcraft grievance*, August 19, 1985. Barrett — 9 pages. (50)†

Absenteeism — verification required due to previous record; medical reasons of grievor found to be untrue; grievance dismissed. *Re General Motors of Canada Ltd. & U.A.W., Local 222; Thornton grievance*. See (30), *supra*. (51)

Failure to report accident — company voluntarily reinstates; grievor claims wage compensation; penalty not unreasonable; grievance dismissed. *Re I.C.L. International Carriers Ltd. & Teamsters, Local 880; Black grievance*, August 22, 1985. Majority: Brent, Burnell; dissent: Baillargeon — 13 pages. (52)

Insubordination — verbal abuse to manager not denied by grievor; three-day suspension reasonable in circumstances; grievance dismissed. *Re The Mill Dining Lounge Ltd. & H.C.R.T.E.U., Local 261; Donoghue grievance*, August 27, 1985. Pyle — 22 pages. (53)†

Negligence alleged — established; grievors failed to couple ditch digger and cars in siding, failed to park the cars in manner to give sufficient clearance with the main line; failure to follow safety rule; poor past record; grievances dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Glover and Lariviere grievances*, August 1, 1985. Brunner — 15 pages. (54)

Procedure — right to union representation at disciplinary meeting; substantive right; denied by employer; discipline nullified; grievance allowed. *Re Clarke Institute of Psychiatry & O.N.A.; Uglesic grievance*, July 31, 1985. Majority: Knopf, Mayne; dissent: Murray — 19 pages. (55)\*

Physical abuse of fellow employee — momentary flare-up; degree of provocation present; grievance allowed; twenty-day suspension reduced to 10 days. *Re Standard Tube of Canada Inc. & U.A.W., Local 636; Strickert grievance*, August 7, 1985. Roberts — 12 pages. (56)

Refusal to remove sign from back — no policy prohibiting signs or buttons but refusal to remove sign insubordinate; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; DeCarlo grievance*, August 13, 1985. Wilson — 10 pages. (57)†

Work performance — no evidence of employer harassment; grievance dismissed. *Re HLX Canada Ltd. & U.S.W.A., Local 3599; Johnson grievance*, August 12, 1985. Willes — 18 pages. (58)

**Employment Status**

Eligibility for pay dependent on employee status — employee not informed of any change in status; grievance allowed; compensation ordered. *Re Argonaut Football Club Inc. & Canadian Football League Players Association; Beckstead grievance*, October 12, 1984. Palmer — 5 pages. (59)

**Estoppel**

Assignment of work — union acceptance of company past practice; union must live under collective agreement it has negotiated; estoppel established; grievance dismissed. *Re Spar Aerospace Ltd. & U.A.W., Local 112; group grievance*, August 17, 1985. Gandz — 10 pages. (60)

Unpaid lunch break introduced — contradicts past practice; collective agreement silent; negotiations considered; estoppel found; grievance allowed. *Re Chrysler Canada Ltd. & United Plant Guard Workers, Local 1958; union grievance*, August 16, 1985. Kennedy — 14 pages. (61)\*

**Grievance Procedure**

Timeliness — grievances not meeting the procedural requirements nor the time limits set out in the collective agreement; grievances not arbitrable. *Re J.H. McNairn Ltd. & U.F.C.W., Local 233F; Carvana grievance*, August 23, 1985. Egan — 13 pages. (62)†

Timeliness — mandatory time limits — change in bargaining agent not sufficient cause for arbitration board to exercise discretion under s.44(6) of O.L.R.A.; grievance dismissed. *Re Fireco Sales Ltd. & Fireco Employees' Association; group grievance*, November 5, 1984. Majority: Palmer, Smeenk; dissent: Penny — 8 pages. (63)

Waiver of timeliness objection — employer delays in objecting; enforcement impliedly waived; grievance arbitrable. *Re Rainy River Valley Health Care & O.N.A.; union grievance*. See (2), (3), *supra*. (64)\*

**Health & Safety**

Discrimination because of past safety complaints alleged — no evidence of related harassment; grievance dismissed. *Re Algoma Steel Corp. Ltd. & U.S.W.A., Local 2251; Fyke grievance*, August 19, 1985. Black, Forbes, Woodcock — 10 pages. (65)

**Holiday Pay**

Entitlement — memorandum from employer serving to proclaim three days as holidays; although grievors not scheduled to report for work during week when holidays fell; grievors still on "active payroll"; no estoppel established on basis of past practice; grievance allowed. *Re Ottawa Roman Catholic Separate School Board & Service and Commercial Employees, Local 272; group grievance*, July 31, 1985. Majority: Pyle, Dunn; dissent: Leblanc — 26 pages. (66)

**Illness**

Return to previous job denied on grounds of medical reasons — assessment of job duties by company doctor reasonable and within management rights; grievance dismissed. *Re Arrowhead Metals Ltd. & U.A.W., Local 399; Poole grievance*, August 9, 1985. Hinnegan — 10 pages. (67)

**Interest Arbitration**

Crown employees — (special adjustment); all factors in s.12 Crown Employees Collective Bargaining Act to be considered; Board remains seized. *Re The Crown in Right of Ontario & O.P.S.E.U.; policy grievance*, August 22, 1985. Majority: Teplitsky; dissent: Milley, Varster — 5 pages. (68)

Final offer selection — limited to salary gains; other types of benefits separately set out by parties; employer's position selected. *Re University of Ottawa & Association of Professors of the University of Ottawa; union grievance*, August 19, 1985. Teplitsky, Epstein, Dupre — 6 pages. (69)

**Interpretation**

Admissibility of extrinsic evidence from negotiations — words “including past service” latently ambiguous in determining credit for past service for pension entitlements; grievance dismissed. *Re York, Corporation of the City of & C.U.P.E., Local 840; policy grievance*, August 23, 1985. Majority: Burkett, Donley; dissent: Hodges — 35 pages. (70)

**Job Posting**

Temporary vacancies — collective agreement requires employer to follow job posting provisions only for permanent vacancies and not for temporary vacancies; grievance dismissed. *Re Disabled and Aged Regional Transit System & C.U.P.E., Local 839; policy grievance*, August 9, 1985. Solomatenko — 9 pages. (71)\*†

**Job Vacancy**

Attrition — bona fide lack of work; no need to consult union; grievance dismissed. *Re Beacon Hill Lodges of Canada Ltd. & S.E.U., Local 210; union grievance*, August 20, 1985. Majority: McLaren, Hussey; dissent: Solberg — 16 pages. (72)\*

Seniority overlooked to fill temporary vacancy — no job vacancy found to exist; collective agreement considered; legitimate exercise of management rights; grievance dismissed. *Re Multi-Fittings Ltd. & Int'l. Molders and Allied Workers, Local 49; Rodgers grievance*, August 22, 1985. E.B. Jolliffe — 15 pages. (73)

**Lay-Off**

Election by grievor of termination for benefits pursuant to adjustment programme rather than lay-off; programme pursuant to s. 60.13 Canada Labour Code; no obligation to administer according to seniority; grievance dismissed. *Re Atomic Energy of Canada Limited & Public Service Alliance, Local 70367; Syer grievance*, July 30, 1985. Majority: Brunner, Healy; dissent: Caron — 13 pages. (74)

Qualifications — grievance allowed; full compensation for period of improper lay-off. *Re Savage Shoes Limited & U.F.C.W., Local 233F; Health grievance*, August 12, 1985. Hearn — 11 pages. (75)†

Streamlining of company — laying off of grievor proven profitable; grievor declines meeting with employer re alternatives; legitimate exercise of management rights; grievance dismissed. *Re Toronto Star Newspapers Ltd. & Southern Ontario Newspaper Guild; Bartlett grievance*, August 23, 1985. Swan — 16 pages. (76)

Working half-shift — agreement not specific to lay-off applying to less than on shift; grievance dismissed. *Re St. Lawrence Cement Inc. & E.C.W.U.; group grievance*, February 11, 1985. Majority: Palmer, Billings; dissent: Nokes — 5 pages. (77)\*

**Leave of Absence**

Denial — employer training program planned — employer discretion proper and reasonable; grievance dismissed. *Re Windsor Arms Hotel Ltd. & Food and Service Workers; Rebelo grievance*, August 12, 1985. McKechnie — 20 pages. (78)†

Educational leave — employer entitled to stipulate terms as to assignment of any work during term of leave; while on leave grievor not a member of bargaining unit for purposes of protection from contracting-out; grievance dismissed. *Re O.P.S.E.U. & Ontario Public Service Staff Union; Nabi grievance*, February 28, 1985. Swan — 25 pages. (79)

**Management Rights**

Unilateral imposition of rule respecting crew make-ups — not within “conditions” of employment provision; legitimate exercise of management rights; grievance dismissed. *Re Brink's Canada Ltd. & Teamsters, Local 419; policy grievance*, August 20, 1985. Majority: Saltman, Brisbin; dissent: O'Driscoll — 8 pages. (80)

Company rule — requirement of valid driver's licence to operate company mobile equipment on company property not unreasonable; grievance dismissed. *Re Heckett Division of Harsco Corporation & U.S.W.A., Local 7577; Staples grievance*, May 23, 1985. Weatherill — 5 pages. (81)

Dress code valid exercise of management rights — disciplinary penalties specified for breach not binding as to issue of just cause must not be imposed on non-corrigible behaviour; must be proportional to magnitude of breach; grievance allowed in part. *Re McKellar General Hospital & O.N.A.; policy grievance*, May 14, 1985. Baum — 48 pages. (82)\*†

Elimination of position — proper procedure followed; grievance denied. *Re London, Board of Commissioners of Police of the City of & London Police Association; Toomer grievance*, October 4, 1984. Palmer — 11 pages. (83)

Extent of arbitral review — jurisdiction of arbitrator limited to search for “bona fide” or honesty of purpose; grievance denied. *Re St. Joseph's Hospital, Chatham & O.N.A.; Walker grievance*, May 7, 1985. R.J. Roberts — 14 pages. (84)\*†

Policy on unexcused absenteeism — policy as amended reasonable. *Re Carter Carburetor, Division A.C.F. Canada Limited & I.A.M., Local 2243; policy grievance*, May 3, 1985. Teplitsky — 5 pages. (85)

**Maternity Leave**

Extent of entitlement — alleged agreement intended to steer employees towards shorter leave; grievance allowed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 1530; Chevrier grievance*, December 13, 1984. Palmer — 5 pages. (86)

**Overtime**

Distribution — difference among employees significant; grievance allowed. *Re Cyanamid Canada Inc. & U.E., Local 536; Savarie grievance*, August 16, 1984. Palmer, Davidson, Morley — 7 pages. (87)

Distribution — employer alleged that bad weather made compliance with agreement unworkable; not justified in these circumstances; grievance allowed. *Re Eldorado Resources Limited & U.S.W.A., Local 13173; Lonsberry and Bisset grievances*, November 10, 1984. Palmer — 5 pages. (88)

Distribution — employer complying with agreement so long as overtime equitably distributed over a six-month period; grievance dismissed. *Re General Foods Inc. & U.F.C.W., Local 1230; Clark grievance*, September 24, 1984. Majority: Palmer, Luborsky; dissent: Stewart — 8 pages. (89)

Distribution — grievor unable to perform work and demoted after short time; grievance denied. *Re Abex Industries Limited & U.S.W.A.; Sinclair grievance*, July 25, 1984. Palmer — 5 pages. (90)

Distribution improper — inadvertence no excuse; grievance allowed. *Re Polysar Limited & E.C.W.U., Local 914; Esselment, McEwan, Burd, Burgess grievances*, May 9, 1985. Hinnegan — 8 pages. (91)



Distribution — refusal to allow double shift — grievance allowed in part. *Re Labatt's Ontario Breweries & Brewery Workers, Local 304; policy grievance*, May 24, 1985. Brandt — 15 pages. (92)

Remedy for improper distribution — damages appropriate. *Re Eldorado Resources Limited & U.S.W.A., Local 13173; Welburn grievance*, April 8, 1985. Palmer — 4 pages. (93)

Distribution based on seniority in department — account held to be separate department; grievance dismissed. *Re Howell Warehouse Co. Ltd. & The Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; group grievance*, August 6, 1985. Weatherhill — 10 pages. (94)†

Entitlement — eligible regular employees entitled to be canvassed for overtime assignment in priority to summer students; grievance allowed. *Re Inter-City Truck Lines (Canada) Inc. & Teamsters, Local 938; Molnhuber grievance*, August 1, 1985. Majority: Brent, McRae; dissent: Fosberry — 10 pages. (95)

Entitlement — grievor only entitled to overtime concerning his specific job classification; grievance dismissed. *Re Standard Tube Canada Inc. & U.A.W., Local 636; Wood grievance*, August 21, 1985. Hinnegan — 6 pages. (96)

Entitlement of employees who normally perform the work — employer cannot exercise discretion in offering; grievance allowed; money damages allowed. *Re Standard Tube of Canada Inc. & U.A.W., Local 636; Armstrong grievance*, July 7, 1985. R.J. Roberts — 10 pages. (97)

Refusal of overtime assignment — assignment of work alleged to be more appropriately characterized as call-in; incident giving rise to need for assignment not emergency or unforeseen — effort made to distribute assignments pursuant to overtime requirements; grievance dismissed. *Re Falconbridge Limited & Sudbury Mine, Mill & Smelter Workers, Local 598; Thomson grievance*, August 5, 1985. Baum; dissent: Valin; partial dissent: O'Neil — 19 pages. (98)

Remedy for improper distribution — in kind relief applicable only where overtime not involving "work normally performed" — otherwise monetary relief necessary; grievances allowed. *Re Chromasco (Timminco Ltd.) & U.S.W.A., Local 4632; McNulty grievances*, August 12, 1985. Frankel — 11 pages. (99)†

Wrong day claimed in grievance — distribution already grieved on correct day by another employee; grievance dismissed. *Re Elan Tool and Die Ltd. & U.A.W., Local 127; Dudgeon grievance*, July 7, 1985. Palmer — 3 pages. (100)

### Premium Pay

Assignment to temporary work headquarters requiring overnight stay — requisite prior notice not given — no "emergent conditions" to justify dispensing with notice — premium payable; grievances allowed. *Re Ontario Hydro & Ontario Hydro Employees' Union, & C.U.P.E., Local 1000; Racicot and Yawney grievances*, August 2, 1985. Swan, Kennedy, Vincer — 13 pages. (101)

Characterization of extra hours regularly worked prior to regular shift on Monday — collective agreement and past practice considered; simple overtime not Sunday work; grievance dismissed. *Re I.K.O. Industries Ltd. & U.S.W.A.; group grievance*, July 18, 1985. O'Shea — 9 pages. (102)

### Progression

Management rights to determine time limits for moving to higher classification — no evidence of management bad faith; grievance dismissed. *Re Standard Tube of Canada Inc. & U.A.W., Local 636; Strickert grievance*, August 9, 1985. Roberts — 6 pages. (103)

### Promotion

Move within classification — language of agreement referred to seniority "preference for any posted job"; grievance allowed. *Re Spar Aerospace Limited & U.A.W., Local 112; Lee grievance*, August 13, 1985. E.B. Jolliffe — 20 pages. (104)\*†

Qualifications — biased assessment of qualifications regarding incumbent working within department alleged; departmental bias held to be reasonable; grievance dismissed. *Re St. Joseph's Hospital, Hamilton & C.U.P.E., Local 786; Hammond grievance*, August 6, 1985. Dunn — 10 pages. (105)†

Qualifications — denial based on undisciplined safety violation — employer not placing undue weight upon safety infraction; grievance dismissed. *Re Dow Chemical Canada Incorporated & Graphic Communications Int'l. Union, Local 466; Sharpe grievance*, August 7, 1985. P. Picher — 16 pages. (106)

Qualifications — employer found to have been reasonable in assessing grievor as not as qualified as junior incumbent; grievance dismissed. *Re North York, Corporation of City of & C.U.P.E., Local 94; Gentile grievance*, August 1, 1985. Barrett — 13 pages. (107)†

Qualifications — employer within bounds in making its decision on skill and ability; grievance dismissed. *Re Canada Wire and Cable Ltd. & U.E., Local 521; O'Brien grievance*, August 27, 1985. Boscariol — 5 pages. (108)†

Qualifications — grievor lacking aptitude for mechanical comprehension in comparison to grievor as revealed by test; validity of test not questioned; competition clause; grievance dismissed. *Re Johnson Matthey Limited & U.S.W.A., Local 9046; Slack grievance*, August 2, 1985. Majority: McLaren, Young; dissent: Nicol — 12 pages. (109)

Qualifications — grievor less qualified than outside incumbent; but competition clause restricted to consideration of bargaining-unit employees only; grievance allowed. *Re Parry Sound District General Hospital & O.N.A.; Huyge grievance*, August 6, 1985. Boscariol — 6 pages. (110)†

Qualifications — preferred qualification used as deciding factor — found to be reasonable — employer not required to train senior employee; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital Inc. & O.N.A.; Leio grievance*, August 5, 1985. Rose — 16 pages. (111)†

Qualifications — "work required" to be done the determining factor; grievor not qualified; grievance dismissed. *Re Spar Aerospace Ltd. & U.A.W., Local 112; Demarco grievance*, August 21, 1985. Saltman — 11 pages. (112)†

Settling of qualifications constrained by job evaluation clause — employer cannot unilaterally introduce qualifications, past practice notwithstanding; grievance allowed, remitted to parties. *Re Ontario Hydro & C.U.P.E., Local 1000; group grievance*, July 10, 1985. Majority: Palmer, Beaulieu; dissent: Abbott — 14 pages. (113)

Setting of qualifications — letter of understanding sufficiently modifies collective agreement to give employer the right to hire new employee; grievance dismissed. *Re Spar Aerospace Ltd. & U.A.W., Local 112; policy grievance*, July 19, 1985. O'Shea — 14 pages. (114)†

### Recall

Effective period of recall — recall rights can be exercised at posting even if job commences when recall rights expired; customary practice of confirming jobs prior to start allows for exercise of recall rights; grievance allowed. *Re Prescott-Russell Le Conseil D'Education & L'Association Des Enseignants Franco-Ontariens; policy grievance*, August 7, 1985. M. Picher — 9 pages. (115) (English translation not available)

Temporary openings due to vacations — previously temporarily transferred employees claim right to return; collective agreement considered; legitimate exercise of management rights; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; group grievance*, August 26, 1985. Majority: Kennedy, Storie; dissent: Marshall — 10 pages. (116)

### Scheduling of Work

Employee instructional program alters scheduling — agreement to assess individual impact upheld; not necessary for management to consult institution committee; grievance partially allowed. *Re Niagara College of Applied Arts and Technology & O.P.S.E.U.; union grievance*, August 15, 1985. H.D. Brown, Shields, Beaulieu — 22 pages. (117)

Holiday shift — junior employee given work; grievor on different "schedule"; no breach of collective agreement; grievance dismissed. *Re Algoma Steel Corp. Ltd. & U.S.W.A., Local 2251; McLean grievance*, August 19, 1985. Black, Forbes, Woodcock — 6 pages. (118)

### Sick Leave

Abuse alleged: leave taken at fishing camp — no evidence of abuse; grievor not completely candid; thirty-day suspension reduced to three days. *Re Canada Post Corp. & C.U.P.W.; Clark grievance*, August 2, 1985. E.B. Jolliffe — 28 pages. (119)

Sick leave immediately before scheduled vacation — continuing absence incorrectly charged to vacation time; grievance allowed. *Re North Bay Hydro Electric Commission & C.U.P.E., Local 72; Stewart grievance*, August 26, 1985. Majority: Dunn, Gower; dissent: Young — 9 pages. (120)

### Sick Pay

Service under the collective agreement includes service outside the bargaining unit — grievor entitled to short-term sick leave benefits; grievance allowed. *Re York County Hospital & O.N.A.; individual grievance*, August 20, 1985. Betcherman — 6 pages. (121)†

### Transfer

Transfer because of interpersonal conflict — held to be non-disciplinary and exercised within transfer provisions of contract; grievance dismissed. *Re York Region Roman Catholic Separate School Board & York Unit of the Ontario Catholic Teachers Association; Kmiec grievance*, August 9, 1985. Majority: Adams, Riggs; dissent: Green — 24 pages. (122)

### Travel Allowance

Claim for reimbursement for repairs necessitated by breakdown while driving under extraordinary conditions on company business — grievor partially responsible for extent of damage; grievance allowed in part. *Re The Globe and Mail & The Southern Ontario Newspaper Guild; Montgomery grievance*, August 1985. Kruger — 12 pages. (123)†

### Vacations

Unilateral cancellation of vacations in anticipation of strike vacations granted at time "agreeable to both parties"; unilateral declaration is breach; grievance allowed; damages awarded for out-of-pocket losses. *Re Family and Children's Services of Renfrew County and City of Pembroke, & O.P.S.E.U., Local 459; group grievance*, August 8, 1985. Majority: Devlin, Herbert; dissent: Dickson — 12 pages. (124)\*

Part-time employees lose vacation time upon becoming full-time — no justification in collective agreement; time served does not mean hours worked; grievance allowed. *Re Nestle Enterprises Ltd., Stouffer's Division & S.E.U., Local 183; policy grievance*, August 19, 1985. Simmons — 12 pages. (125)

### Vacation Pay

Calculation for reinstated employee — time off work considered because of W.C.B. benefits received during period; grievance allowed. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Local 5595; Strachan grievance*, August 8, 1985. Devlin — 5 pages. (supplementary award) (126)†

Entitlement — company violated collective agreement by not paying vacation pay; order that amounts be paid; grievance allowed. *Re General Homes Systems Ltd. & United Brotherhood of Carpenters and Joiners, Local 3054; group grievance*, August 13, 1985. Welling — 9 pages. (127)†

Entitlement — grievor found to have "actually worked" during the vacation eligibility period while employed on a retraining programme and in receipt of Worker's Compensation benefits; grievance allowed. *Re Denison Mines Limited & U.S.W.A.; Rollin grievance*, July 26, 1985. M.G. Picher — 13 pages. (128)

Time for payment — increased vacation pay not due until anniversary of requisite years of continuous service; grievance dismissed. *Re Denison Mines Limited & U.S.W.A.; Loranger grievance*, July 26, 1985. M.G. Picher — 11 pages. (129)

### Wages

Acting pay — team leader and charge pay provisions applied to seven hospitals. *Re Participating Hospitals, Responsibility Pay Implementation (Hamilton) & O.N.A.; group grievances*, July 25, 1985. Teplitsky, Paliare, Winkler — 7 pages. (130)

Benefits for part-time employee — agreement only addresses full-time employees with no provision for pro-rating — no waiving of grievor's rights by corporation's prior notice; grievance allowed, full benefits applied. *Re Barrie, Corporation of the City of & C.U.P.E.; Weir grievance*, August 7, 1985. Baum — 10 pages. (131)†

Establishment of an incentive rate — job not previously in existence — employer must consult with union to determine a base rate according to the collective agreement; grievance allowed. *Re Bilt-Rite Upholstering Company Limited & Upholsterer's Int'l. Union; policy grievance*, August 23, 1985. Davis — 11 pages. (132)†



Interest on retroactive pay — commencement of interest payment from date grievance filed at the Bank of Canada rate; grievance allowed. *Re South Haven Nursing Home & C.U.P.E., Local 2225; policy grievance*, August 14, 1985. Solomatenko — 8 pages. (133)†

Rate of pay — company not following pay schedules negotiated in last collective agreement — unilateral act of classifying employees disallowed; grievance allowed. *Re North York Hydro Electric Commission & C.U.P.E., Local 11; policy grievance*, August 21, 1985. Langille — 15 pages. (134)†

#### Welfare Plans

Short-term disability plan — hospital required to contribute its proportionate share toward billed premium for coverage of eligible employees under long-term disability portion of HOODIP plan for employees absent due to illness during second fifteen-week period of short-term disability; grievance allowed. *Re Kincardine and District General Hospital & O.N.A.; policy grievance*, June 20, 1985. Teplitsky, Winkler, Robbins — 6 pages. (135)

#### Work Assignment

Regular assignment to carry out duties of lower classification — whether material enough to constitute new classification — held not to be extended enough in time and within permissible range of assignment; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; policy grievance*, August 7, 1985. M. Picher — 13 pages. (136)

Establishment of new department to be mutually agreed between company and union — such agreement established; grievance dismissed. *Re Hayes-Dana Inc. & U.A.W., Local 676; union grievance*, July 30, 1985. Weatherill — 9 pages. (137)

Firewatch during Christmas shutdown performed by supervisors — duties not covered in job classification system; past practice not a bar; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; group grievance*, August 1, 1985. Majority: Brent, Balfour; dissent: Marshall — 14 pages. (138)

Reorganization of job duties from one employee group to another — seniority not giving proprietary rights in job to employee group; grievance dismissed. *Re Sheaffer Pen Textron, Sheaffer Eaton Division of Textron Canada Ltd. & I.A.M., Local 2315; Robinson grievance*, August 2, 1985. McLaren — 8 pages. (139)†

Scheduling of work during plant shutdown — one of grievors made clear request to management to work, other did not — if such week had been worked grievor entitled to overtime; Johnston grievance allowed, Charpentier grievance dismissed. *Re Libby, McNeill and Libby of Canada & Sheet Metal Workers, Local 234; Johnston and Charpentier grievances*, August 5, 1985. P. Picher — 18 pages. (140)

Seniority provisions as to work preference — provisions in agreement not in contravention of normal practice of assignment; grievance dismissed. *Re Thibodeau-Finch Express Ltd. & Teamsters, Local 938; Gauley grievance*, August 7, 1985. Majority: P. Picher, Tayles; dissent: Petryshen — 26 pages. (141)

Supervisors doing work relating to Automatic Teller Machines — no specific restrictions on management assigning such work; grievance dismissed. *Re Northland Savings and Credit Union Ltd. & O.P.E.I.U., Local 523; union grievance*, August 26, 1985. Hearn — 11 pages. (142)†

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of November, 1985.

*Windsor Hospital Linen Services & S.E.U., Local 210; McKechnie, Bartlet, Solberg* — 14 pages.

*Knollcrest Lodge & H.O.P.E., Local 206; V.E. Scott, O'Donoghue, Switzman* — 19 pages.

*Participating Hospitals & O.N.A.; V.E. Scott; dissent: Mayne; partial dissent: Winkler* — 29 pages.

*Norfolk-Haldimand Regional Nursing Home & L.D.S.W.U., Local 220; Brunner; addendum: Herbert; dissent: Docherty* — 34 pages.

*Manitoulin Centennial Manor & C.U.P.E., Local 2165; Samuels, Harris, McVey* — 10 pages.

*Pioneer Manor Home for the Aged & O.N.A.; Barrett; addendum: Ballantyne; partial dissent: Baldwin* — 18 pages.

*St. Raphael's Nursing Home & L.D.S.W.U., Local 220; Order to execute collective agreement; R.J. Roberts, McGarva, Robbins* — 2 pages.

*Mt. Sinai Hospital, Toronto East General and Orthopaedic Hospital and Wellesley Hospital & S.E.I.U., Local 204 (Clerical Units); Joyce, Winkler; dissent: Solberg* — 30 pages.

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# Monthly Bulletin



Ontario Ministry of Labour

Hon. William M. Wrye, Minister  
T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

The following people have been approved for inclusion on the approved panel of arbitrators by the Minister of Labour, The Honourable William M. Wrye:

Mr. André Déom, 214 Le Baron, Boucherville, Quebec, J4B 2E1; telephone (514) 655-3656; Toronto telephone (416) 283-3418.

Mr. Morton G. Mitchnick, 42 MacPherson Avenue, Toronto, Ontario, M5R 1W8; telephone (416) 967-5051.

Mr. Maurice W. Wright, c/o Soloway, Wright, Houston, Greenberg, O'Grady, Morin, 99 Metcalfe Street, Ottawa, Ontario, K1P 6L7; telephone (613) 236-0111.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of September, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.



### Arbitrability

Identical grievance brought after award from previous arbitration released to parties showing only chairman's decision and dissent of union nominee — company nominee not precluded from indicating concurrence subsequently — board not functus officio until concurrence communicated to parties; grievance not arbitrable. *Re Seneca College of Applied Arts and Technology & O.P.S.E.U.*; *Burton grievance*, August 30, 1985. Majority: Brown, Shields; dissent: Walsh — 15 pages. (1)\*

Payment of benefits under H.O.O.D.I.P. — employer under the collective agreement is under an obligation to provide coverage and to see that employees receive the benefits; jurisdiction asserted. *Re Kincardine and District General Hospital & O.N.A.*; *Bosch grievance*, September 17, 1985. Majority: Dunn, Robbins; dissent: Winkler — 4 pages. (2)

Voluntary arrangement — training and testing of an employee for a computer programming position — procedure alleged to be unfair; board has no jurisdiction since situation not covered by collective agreement. *Re Champion Road Machinery Ltd. & I.A.M.*, *Local 1863*; *Scott grievance*, September 16, 1985. Majority: E.B. Jolliffe, Sargeant; dissent: Solberg — 24 pages. (3)

### Bargaining Unit

Inclusion of recently employed person in bargaining unit — person employed in confidential capacity relating to labour relations; grievance dismissed. *Re Plainfield Children's Homes & S.E.U.*, *Local 663*; *union policy grievance*, September 4, 1985. Draper — 6 pages. (4)†

New job created outside unit — combining several tasks from excluded positions but no supervisory authority — not technical enough to fit listed exclusions; grievance allowed. *Re Wabco Ltd. & U.E.*, *Local 559*; *policy grievance*, September 26, 1985. Majority: Weatherill, Davidson; dissent: Addario — 13 pages. (5)

Temporary and part-time employees not being provided with benefits — written agreement referring to "all employees" must include temporary and part-time employees; grievance allowed. *Re Matilda, Municipal Corp. of Township of & C.U.P.E.*, *Local 2311*; *union grievance*, September 5, 1985. Thorne — 9 pages. (6)†

### Classification

Higher classification claimed — changes to job only minor, not enough for new classification — transfer of certain jobs did not bring them into higher classification; grievances dismissed. *Re Ferranti-Packard Transformers Ltd. & U.S.W.A.*, *Local 5788*; *group grievance*, September 25, 1985. Davis — 10 pages. (7)†

Higher classification claimed — evidence insufficient to prove claim; grievance dismissed. *Re Mini-Skools Ltd. & O.P.S.E.U.*; *Vanderbeken grievance*, August 23, 1985. Teplitsky, Robbins, Wakely — 2 pages. (8)

### Contracting Out

High priority work; employer not required to offer work on overtime basis to employees to establish non-availability of bargaining unit employees — all fully committed to work other assignments and had performed substantial overtime already — contracting out permissible; grievance dismissed. *Re Indusmin & United Cement, Lime and Gypsum Workers*; *policy grievance*, September 10, 1985. Majority: Swan, Gordon; dissent: Solberg — 12 pages. (9)

Loss of earnings — company barred from contracting out unless warranted by special urgent circumstances; grievance allowed. *Re G.H. Johnson's Furniture (Ottawa) Limited & Teamsters, Local 91*; *Dalton grievance*, September 9, 1985. Frankel — 16 pages. (10)†

Restriction on contracting out if employees regularly performing the work available — measurement of availability for planned manufacture of component parts not to include possibility of doing work on overtime basis; grievance dismissed. *Re Ontario Paper Company & I.A.M.*, *Local 268*; *union grievance*, September 24, 1985. Majority: McLaren, Simpson; dissent: Solberg — 22 pages. (11)

### Discharge

Absence without notification — grievor could have notified; sickness, medication and employment history mitigate; two months' suspension without pay substituted. *Re Reynolds Extrusion Co. & U.S.W.A.*, *Local 8412*; *Samuels grievance*, September 19, 1985. Wilson — 6 pages. (12)†

Absent without reasonable excuse — grievor on W.C.B. — delays to see doctors for permission to return to work reasonable; grievance allowed; reinstatement with full compensation. *Re Algoma Steel Corp. & U.S.W.A.*, *Local 5595*; *Nelson grievance*, August 26, 1985. McKechnie — 11 pages. (13)†

Absenteeism — culminating incident found — ameliorating factors taken into account; reinstatement without compensation. *Re Canadian Timken Ltd. & U.S.W.A.*, *Local 4906*; *Harris grievance*, September 24, 1985. Gorsky — 27 pages. (14)†

Assault on another employee — some evidence of provocation; work relationship capable of being restored, good work record; reinstatement to first similar job opening, without wage or seniority compensation substituted. *Re Redlaw Industries Inc. & U.S.W.A.*, *Local 4657*; *Bylow grievance*, September 16, 1985. Boscariol — 6 pages. (15)†

Culminating incident — past record of breaching work rules; grievance dismissed. *Re Westin Hotel (Hotel Employers Group of Toronto) & Hotel Employees, Restaurant Employees, Local 75*; *Ramji grievance*, August 28, 1985. Solomatenko — 10 pages. (16)†

Destruction of company property — grievor intentionally dropping car battery — discharge upheld; grievance dismissed. *Re Prestolite Battery Division & U.A.W.*, *Local 252*; *Swales grievance*, September 19, 1985. Freedman — 15 pages. (17)

Disability alleged to be misrepresented by grievor — grievor skiing while on W.C.B. — grievor held capable of return to work if able to ski — no direct evidence as to medical status; four-month suspension substituted. *Re Engelhard Industries of Canada Ltd. & E.C.W.U.*, *Local 45*; *Marsell grievance*, September 6, 1985. Solomatenko — 23 pages. (18)†

Dishonesty; grievor committing repetitive acts of dishonesty by misleading employer as to his physical condition throughout his absence at work — grievor unable to establish credibility; grievance dismissed. *Re Canron Incorporated, Tamper Division & Int'l. Molders and Allied Workers, Local 28*; *Elia grievance*, September 24, 1985. H.D. Brown — 31 pages. (19)

Disturbances while at work through erratic behaviour as a result of a major manic disorder — just cause for discharge not established — indefinite suspension just and equitable; grievance allowed re discharge, but not allowed re suspension; grievor to return to work when mentally and physically fit to do so. *Re Indalex, Division of Indal Limited & U.S.W.A., Local 2729; Ramgobin grievance*, September 25, 1985. E.B. Jolliffe — 19 pages. (20)†

Incarceration — employer refused to participate in Temporary Absence Program — no automatic termination provision for any specified period of absence — discharge held excessive for eight days' absence; reinstatement without compensation. *Re C.A.E. Diecast Ltd. & I.A.M., Local 2719; Collee grievance*, September 5, 1985. Devlin — 10 pages. (21)\*†

Quit alleged: voluntary resignation made by grievor — resignation rescinded, but rescission not making resignation invalid; grievance dismissed. *Re T. Eaton Co. Limited & R.W.D.S.U.; Henderson grievance*, August 31, 1985. Gandz — 8 pages. (22)†

Receipt of payment for overtime work on false pretenses alleged — established system for authorization of overtime lax — much of overtime claimed was worked — good past record; reinstatement without compensation. *Re Ottawa, Corp. of City of & C.U.P.E., Local 503; Clement grievance*, August 30, 1985. Majority: Thorne, Switzman; dissent: Gladu — 25 pages. (23)

Safety infractions — poor past record of safety violations — hazardous work environment underground in mine; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Lariviere grievance*, September 24, 1985. O'Shea — 14 pages. (24)

Sleeping on job established — poor past record; evidence not establishing chronic alcoholism as reason for poor record; grievance dismissed. *Re Fibreglas Canada Inc. & E.C.W.U.; Parker grievance*, September 19, 1985. Hinnegan — 8 pages. (25)

Theft of company property — grievor not completely frank — restoration of trust unlikely; grievance dismissed. *Re Texaco Canada Inc. & E.C.W.U., Local 599; Ayles grievance*, September 10, 1985. Solomatenko — 11 pages. (26)†

Theft of company property — not established; grievance allowed with full compensation. *Re Ault Dairies, Division of Ault Foods Limited & Milk and Bread Drivers, Local 647; Shaw grievance*, September 19, 1985. Davis — 15 pages. (27)†

Theft of food from company cafeteria — evidence not conclusive; reinstatement with full compensation. *Re Camco Inc. & U.E., Local 550; Morris grievance*, September 17, 1985. Welling — 11 pages. (28)†

Threat of physical assault to supervisor alleged — not established; grievance allowed. *Re Toronto, Corp. of City of & Metropolitan Toronto Civic Employees, Local 43; Del Grande grievance*, September 23, 1985. Majority: Dunn, Tate; dissent: Milks — 23 pages. (29)

Unauthorized break at work — fatigue understandable from long periods of overtime work the preceding day — poor past record; reinstatement without compensation. *Re K-W Food Services & R.W.D.S.U., Local 414; Peel grievance*, September 9, 1985. Majority: O'Shea, McDonald; dissent: Sargeant — 15 pages. (30)

Work performance — grievor's performance deteriorating for a period of time; mental depression; no reasonable probability of improvement in near future; grievance dismissed. *Re Atomic Energy of Canada Ltd. & Chalk River Technicians and Technologists, Local 1568; Long grievance*, September 17, 1985. Majority: Brunner, Healy; dissent: Egan — 20 pages. (31)

Work performance: inability to perform job alleged — company's allegations unfounded; grievance allowed. *Re Swissplas Limited & E.C.W.U., Local 819; Adams grievance*, September 9, 1985. Solomatenko — 15 pages. (32)†

### Discipline

Accident with company vehicle — grievor convicted of failure to report accident — employer must still prove on reasonable balance of probabilities that grievor actually involved in accident; grievance allowed; full compensation for suspension. *Re Toronto Star Newspapers Limited & Southern Ontario Newspaper Guild, Local 87; Danek grievance*, September 18, 1985. Samuels — 5 pages. (33)

Behaviour contrary to posted rules of employer — employer having reasonable cause to issue written warning; grievance dismissed. *Re Simcoe Tavern (Oshawa) & Hotel and Restaurant Employees, Local 280; Brayley grievance*, September 6, 1985. Adamson — 12 pages. (34)†

Carelessness — company car stolen; grievor left keys in ignition; car recovered but potential loss great; three-day suspension not unreasonable; grievance dismissed. *Re The Windsor Star & The Newspaper Guild, Local 239; Tanasychuk grievance*, September 18, 1985. Majority: Brent, Burnell; dissent: Jones — 11 pages. (35)

Errors in judgement — minor in nature; grievor's record examined; similar cases considered; five-day suspension substituted for twenty-day suspension. *Re St. Mary's Hospital, London & London and District Service Workers, Local 220; Borshell grievance*, September 17, 1985. McLaren, Mustard, Solberg — 13 pages. (36)

Improper completion of daily log book in contravention of safety rules — mistake inadvertent without wilful intent — suspension punitive and not necessary for correction of grievor's conduct; grievance allowed. *Re McKinlay Transport Limited & Teamsters, Local 938; Brown grievance*, August, 1985. Majority: O'Shea, Petryshen; dissent: Harker — 31 pages. (37)

Insubordination and failure to follow safety procedures — grievor partially provoked by abusive foreman; disciplinary notice substituted for three-day suspension. *Re Accurcast Die Casting Ltd. & Int'l. Molders and Allied Workers, Local 93; Papps grievance*, September 6, 1985. Gandz — 6 pages. (38)

Insubordination and failure to perform duties — insufficient evidence; personal conflict between grievor and superior at root; grievance allowed. *Re Int'l. Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 & O.P.E.I.U., Local 343; Wagner grievance*, August 23, 1985. Solomatenko — 10 pages. (39)†

Insubordination: grievor failing to perform job assigned to him — suspension for one shift appropriate discipline; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Hill grievance*, September 4, 1985. Kruger — 8 pages. (40)†



Insubordination — grievors leaving work without permission — suspensions appropriate and properly administered; grievances dismissed. *Re Elan Corporation & U.A.W., Local 127; group grievance*, August 26, 1985. McKechnie — 17 pages. (41)†

Insubordination or carelessness — failure to follow instructions resulting in injury to fellow employee — not an intentional lapse; written warning substituted for suspension. *Re Stormont, Dundas and Glengarry, Corp. of United Counties of, & C.U.P.E., Local 1792; Brown grievance*, September 4, 1985. Majority: H.D. Brown, Smith; dissent: Comrie — 13 pages. (42)

Lateness in reporting to work — verbal warning plus loss of 16 hours' pay as result of grievor's inability to report to work on time on day in question — loss of pay excessive — compensation to time grievor able to report. *Re Superior Ambulance Limited & O.P.S.E.U., Local 207; Krulick grievance*, September 16, 1985. Majority: Devlin, Beaulieu; dissent: Klein — 14 pages. (43)

Procedure — grievor not notified at a meeting with management of the reasons for disciplinary action prior to the imposition of the suspension; grievance allowed. *Re Quaker Oats Company of Canada Ltd. & U.F.C.W., Local 293; Hickey grievance*, September 23, 1985. Majority: Burkett, Solberg; dissent: Storie — 21 pages. (44)

Refusal of grievor to wear ear protection device — established rule reasonable and no evidence of discrimination; evidence that some employees break the rule from time to time not precluding company from enforcing rule requiring equipment to be worn; grievance dismissed. *Re Silverwood Dairies & Milk and Bread Drivers, Local 647; Spooner grievance*, August 19, 1985. Majority: Rayner, Wace; dissent: McRae — 14 pages. (45)

Refusal to work because of safety concerns — company fails to follow S.23 — Occupational Health and Safety Act procedures in dealing with complaint; grievance allowed. *Re Walker Exhausts & U.S.W.A., Local 2894; Reid grievance*, August 29, 1985. O'Shea — 14 pages. (46)

Requirement to undergo counselling — discrimination and harassment not established; grievance dismissed. *Re Ottawa Civic Hospital & O.N.A.; Dunnah grievance*, September 9, 1985. Weatherill, Butler, Mustard — 22 pages. (47)

#### Employment Status

Part-time employee — probationary period not pro-rated to hours worked; grievor wrongly denied seniority and promotion; appointment to open position with compensation granted. *Re Timmins, City of & C.U.P.E., Local 210; Fuller grievance*, September 3, 1985. Wilson — 21 pages. (48)†

Reinstatement after suspension; employer pro-rating vacation and sick leave credit — not an employee while on suspension; grievance dismissed. *Re Hamilton Hydro-Electric Commission & I.B.E.W., Local 138; Lee grievance*, September 24, 1985. Barton — 9 pages. (49)†

#### Estoppel

Representation made by employer to make no deduction from wages for time off for medical and dental appointments — in reliance, union decided to forego opportunity of codifying practice in collective agreement — estoppel applicable; grievance allowed in part. *Re Sklar-Peppler Inc. & Int'l. Woodworkers; union grievances*, September 5, 1985. Knopf — 23 pages. (50)\*

#### Grievance Procedure

Scope of grievance — raising of grievor's status; management claims must be subject of separate grievance; inextricably tied to grievance merits; adjournment to collect evidence. *Re Algonquin College & O.P.S.E.U.; Roberts grievance*, September 6, 1985. Majority: Brent, Gallivan; dissent: Hunter — 8 pages. (51)

Timeliness — substance of grievance not sufficiently important to exercise equitable jurisdiction to extend time limits; grievance dismissed. *Re Toronto, Corp. of City of & C.U.P.E., Local 43; group grievance*, September 3, 1985. Majority: Kennedy, Milks; dissent: McDonald — 18 pages. (52)

#### Holidays

Shut-down to occur for twenty-four hour period for a holiday — if holiday occurring on Sunday, shut-down to occur the following day — practice applied consistently over the years; grievance dismissed. *Re Domtar Fine Papers, Cornwall, Ontario & Canadian Paperworkers, Local 212 and Local 338; union grievance*, August 26, 1985. Simmons, Byers, Paxton — 10 pages. (53)

#### Holiday Pay

Premium pay for work on a holiday where lieu day assigned — employer reverting to strict application of agreement; grievance dismissed, estoppel not created. *Re Huron Lodge (Windsor, Corporation of City of) & O.N.A.; group grievance*, September 11, 1985. Majority: Saltman, Kuker; dissent: McIntyre — 13 pages. (54)

Qualifying shifts — grievors ill and not working their scheduled shifts immediately preceding the paid holiday; grievance dismissed. *Re Scarborough General Hospital & C.U.P.E., Local 1487; Sargeant and Mackey grievances*, September 23, 1985. Majority: Burkett, Wakely; dissent: Solberg — 12 pages. (55)

Striking employee — company has no right to "schedule" work during legal strike; grievor did work last scheduled day prior to strike and holiday; grievance allowed. *Re General Refractories Co. of Canada Ltd. & U.S.W.A., Local 14857; Clarkson grievance*, September 13, 1985. Davis — 6 pages. (56)\*†

#### Hours of Work

Attendance at a "Gathering" organized by employer after normal working hours to discuss company business — employees deemed to be at work and therefore entitled to compensation; grievance allowed. *Re Steinberg Inc. & U.F.C.W., Local 486; union grievance*, September 6, 1985. Foisy — 17 pages. (57)\*†

Spell periods not being provided by employer — specific spell periods not outlined in agreement; arbitrator not having power to amend terms of agreement; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; union grievance*, August 29, 1985. Joyce — 19 pages. (58)†

Unilateral change in hours of work per week for all employees — indication of "normal" day disallows unilateral change in hours; grievance allowed. *Re Zettel Manufacturing Limited & U.A.W., Local 1524; policy grievance*, September 24, 1985. Gorsky — 20 pages. (59)

Unilateral change of work schedules — appendix schedules bind employer along with past practice of getting union agreement; grievance allowed. *Re Campbellford Memorial Hospital & O.N.A.; policy grievance*, September 18, 1985. Thorne — 8 pages. (60)†

**Illness**

Entitlement to bump into another job due to medical reasons — company justified in refusing particular job because of undue risk of harm to grievor; grievance dismissed. *Re Gates Canada Inc. & United Rubber Workers, Local 733; Boone grievance*, September 16, 1985. Weatherill — 7 pages. (61)

**Job Posting**

Establishment of qualifications — educational requirement alleged to be unfair — existence of joint job evaluation scheme; grievance dismissed. *Re Toronto Public Library Board & C.U.P.E., Local 1996; policy grievance*, August 28, 1985. Majority: Devlin, Budd; addendum: Devlin; dissent: McDonald — 24 pages. (62)

Procedure — technical breach of time requirements for posting grace period phrase omitted from the posting — no prejudice; grievance dismissed. *Re Labatt's Ontario Breweries, division of Labatt Brewing Company Limited & United Brewery Workers, Local 304; Carrigan grievance*, September 23, 1985. McLaren — 22 pages. (63)

**Lay-Off**

Effect of *Employment Standards Act* upon seniority rights — company relying on *Employment Standards Act* to justify its non-compliance with the collective agreement — reliance unjustified; grievance allowed. *Re Norton Company & Chemical, Energy and Allied Workers, Local 154; group grievance*, September 12, 1985. Burkett — 10 pages. (64)\*

Extent of bumping rights — same seniority and lay-off provisions held to contemplate transfer between units — seniority applicable across all units — no posting to fill lay-off vacancies; lay-offs based on skill and ability rather than classification; grievance allowed. *Re Centre Hastings Nursing Home Limited & S.E.U., Local 183; policy grievance*, August 23, 1985. Thorne — 18 pages. (65)†

Qualifications — applicant's ability to do job, not potential administrative disruption, should be main consideration; grievor of equal ability; grievance allowed. *Re Camco Inc. & U.E., Local 555; Taylor grievance*, September 18, 1985. Wilson — 13 pages. (66)†

Qualifications — requirement for available job cannot include qualifications for another job; grievance allowed. *Re William Milne and Sons Limited & Lumber and Sawmill Workers, Local 2693; Hicks grievance*, September 25, 1985. Weatherill — 9 pages. (67)

**Leave of Absence**

Infant care leave — discretionary provision subject to review as to fairness — employer's fettering provision to school year rather than full year unreasonable; grievance allowed, full leave granted. *Re York, Board of Education for the Borough of, & Borough of York Women Teachers' Assoc.; Alban grievance*, August 6, 1985. Majority: Swinton, McDonald; dissent: Clarkson — 15 pages. (68)\*

**Management Rights**

Locker policy requiring ten dollars refundable lock deposit alleged to be unreasonable — not established; grievance dismissed. *Re Toronto General Hospital & O.P.S.E.U.; policy grievance*, September 20, 1985. Foisy, Robbins, Pike — 11 pages. (69)

**Overtime**

Distribution when work is outside of classification — letter of understanding sets criteria for article; grievance allowed; like work to be offered within 30 days or else compensation. *Re C.A.E. Diecast Ltd. & I.A.M., Local 2719; Newmān grievance*, September 2, 1985. Baum — 11 pages. (70)†

Entitlement — corporation justified in offering overtime to alternate rated employee over a regular employee under the terms of the collective agreement; grievance dismissed. *Re Toronto, Corp. of City of & C.U.P.E., Local 43; group grievance*. See (52), *supra*. (71)

Entitlement — overtime work properly falling within job description of grievor's classification, but assigned to another employee; opportunity lost; grievance allowed. *Re Ex-Cell-O Corp. of Canada Ltd. & Int'l. Molders and Allied Workers, Local 49; Mills grievance*, August 9, 1985. Rayner — 10 pages. (72)

Entitlement — work required on overtime being of the nature of work normally performed by grievor; grievance allowed. *Re F.W. Woolworth Co. Ltd. & R.W.D.S.U., Local 414; Burt grievance*, September 6, 1985. Majority: H.D. Brown, Dahmer; dissent: Sergeant — 18 pages. (73)

Repairman not assigned to overtime crew — past practice inconsistent; collective agreement clear; within management rights; grievance dismissed. *Re Imperial Clevite Canada Inc. & I.A.M., Local 1975; Jackson grievance*, September 4, 1985. Majority: H.D. Brown, Baker; dissent: Solberg — 18 pages. (74)

Shift rotation period expanded — Saturday work not overtime, simply regular hours within new schedule; grievance dismissed. *Re Burlington Canada Inc. & Labourers, Local 183; O'Rourke et al grievance*, September 21, 1985. McLaren — 16 pages. (75)

Six hours of labouring work a significant amount which should have been assigned to member of cupola labour classification; grievance allowed. *Re Kelsey-Hayes Canada Limited, Eureka Plant, Woodstock Division & U.A.W., Local 636; Bergman grievance*, September 4, 1985. Roberts — 7 pages. (76)

**Pensions**

Applicability of increased pensions for employees leaving bargaining unit prior to retirement — increases and benefits to be calculated as of date of retirement; grievances dismissed. *Re Standard Tube Canada Inc. & U.A.W., Local 636; policy grievances*, September 11, 1985. Weatherill — 12 pages. (77)

Interest arbitration award improving pension benefits for early retirement — Metropolitan Corporation entitled to use surplus in Benefit Fund under its control to fund improvement on behalf of employer; supplementary award. *Re Metropolitan Toronto, Board of Commissioners of Police for the Municipality of & Metropolitan Toronto Police Association; 1982 interest arbitration*, February 21, 1985. Swan — 16 pages. (78)

**Personal Leave**

Policy of not granting leave where inclement weather basis of request — discretion of employer must not be unduly fettered; grievance allowed. *Re St. Clair College & O.P.S.E.U.; Rinshed grievance*, May 15, 1985. Brent, Gallivan, Herbert — 12 pages. (79)



**Premium Pay**

Pyramiding; overtime on paid holiday — no pyramiding clause in agreement means no duplicating of premium; grievance denied. *Re West Nipissing General Hospital & O.N.A.; Evans grievance*, May 13, 1985. Weatherill, Anand, Winkler — 13 pages. (80)\*

Changes to posted work schedules with less than 48 hours notice — payable to full-time nurses — applicable if shift cancelled by reason of another nurse exercising bumping rights. *Re Participating Hospitals (Cottage Hospital, Uxbridge) & O.N.A.; policy grievance*, February 7, 1985. Teplitsky, Paliare, Winkler — 3 pages. (81)

Weekend work — to be assigned to regular part-time employees before casual part-time, regardless of need to pay premium; collective agreement considered; grievance allowed. *Re Hotel Dieu of Kingston & O.N.A.; policy grievance*, August 19, 1985. Emrich — 19 pages. (82)†

Reduction of premiums — alteration or discontinuance of premium rates not permissible unless the employer and employee mutually agree pursuant to specific provision of collective agreement; grievance allowed. *Re Council of Printing Industries of Canada & The Toronto Typographical Union, No. 91; policy grievance and group grievance*, February 26, 1985. Majority: Swan, Buhler; dissent: Pamerter — 10 pages. (83)

**Probationary Employees**

Automatic termination for failure to meet certain requirements — arbitrary and discriminatory; grievance allowed in part. *Re The Queensway-Carleton Hospital & O.N.A., Local 203; policy grievance*, May 10, 1985. Majority: Simmons, McIntyre; dissent: Mustard — 21 pages. (84)

**Procedure**

Standing of grievor's personal lawyer — non-discrimination clause in collective agreement not providing standing. *Re St. Mary's Hospital, London & London and District Service Workers, Local 220; Borshell grievance*. See (36), *supra*. (85)

Withdrawal of six grievances before proceedings — employer's request for dismissal of grievances rather than permitting withdrawal denied; proceedings terminated. *Re Brouillette Manor Ltd. & O.N.A.; grievances 840424, 84059, 84063*, September 5, 1985. H.D. Brown, Bartlet, Ballantyne — 4 pages. (86)

**Promotion**

Leadhand position — grievor with greater seniority not appointed to position of leadhand; collective agreement provides that seniority is not a factor in the appointment of leadhand; grievance dismissed. *Re Fleet Industries & I.A.M., Local 171; Hunt grievance*, September 18, 1985. Brent — 9 pages. (87)

Denial of tenure — grievor never informed of perceived failings; decision remitted back to Joint Committee for decision upon proper grounds. *Re Ottawa University & The Association of Professors of The University of Ottawa; Chouinard grievance*, May 29, 1985. Majority: Kruger, Etherington; dissent: Lariviere — 20 pages. (88)

Qualifications — grievors entitled to thirty-day familiarization; grievance allowed. *Re Phillips Electronics Ltd. & U.A.W., Local 27; policy grievance*, November 28, 1984. Palmer — 5 pages. (89)

Qualifications — grievor removed from position during training period following his appointment — further ten-day training period ordered; grievance allowed. *Re Inglis Limited & U.S.W.A., Local 2900; Lalonde grievance*, May 1, 1985. Barrett — 9 pages. (90)†

Qualifications — junior grievor more qualified; grievance allowed. *Re Hawkesbury and District General Hospital & O.N.A.; Desjardins grievance*, May 15, 1985. Frankel — 10 pages. (91)†

Qualifications — one grievor establishing qualifications; grievance allowed in part. *Re Timmins, Corp. of City of & C.U.P.E.; Meredith and deLaplante grievances*, May 29, 1985. Davis — 14 pages. (92)†

Qualifications — employer not satisfactorily discharging the onus of establishing grievor's lack of skill and ability to perform job by allowing her to continue working during temporary assignment; grievance allowed. *Re Brantford Public Library Board & C.U.P.E., Local 181*; September 23, 1985. Adamson — 15 pages. (93)†

Qualifications — grievor not qualified to meet the job requirements of an emergency department nurse; grievance dismissed. *Re Joseph Brant Memorial Hospital & C.U.P.E., Local 1065; Nyland grievance*, August 5, 1985. Majority: Rose, Clarkson; dissent: Bouchard — 11 pages. (94)

Qualifications — grievor qualified, but having poor attendance record after injury — regular attendance not a factor to be considered; grievance allowed. *Re North American Steel Equipment Co. & U.S.W.A., Local 666; Emond grievance*, September 10, 1985. Hearn — 7 pages. (95)†

Qualifications — nature of original job opening changing — threshold clause; grievor senior and of at least equal ability; on and off the job experience considered; grievance allowed. *Re Falconbridge Ltd. & U.S.W.A., Local 6855; Hamilton grievance*, September 4, 1985. Majority: McLaren, Carriere; dissent: Valin — 20 pages. (96)

Qualifications — no necessity to bypass seniority provisions in order to meet the needs of the system shown; grievance allowed. *Re Ottawa Roman Catholic Separate School Board & Ontario English Catholic Teachers' Assoc.; Foley grievance*, September 27, 1985. Majority: Weatherill, Power; dissent: Webber — 16 pages. (97)

Qualifications — qualifications reasonable; equivalent experience not found; grievance dismissed. *Re Sault Ste. Marie Board of Education & C.U.P.E., Local 16; Davey grievance*, September 26, 1985. Wilson — 11 pages. (98)†

Qualifications — relative equality clause; two senior grievors unreasonably barred because of "style" and insignificant incident; other five denials not unreasonable; two substitutions to open positions made. *Re St. Joseph's Hospital & O.N.A.; group grievance*, September 12, 1985. Barton — 23 pages. (99)†

Qualifications — "threshold clause"; grievor senior and sufficiently meets qualifications; grievance allowed. *Re Mains Ouvertes — Open Hands Inc. & O.P.S.E.U., Local 458; Atwell grievance*, September 3, 1985. Weatherill — 10 pages. (100)†

**Recall**

Consideration for more than one vacancy during any specific recall — past practice was to consider an employee only once; grievance dismissed. *Re Timberjack Logging Equipment & Int'l. Molders and Allied Workers; Popp grievance*, April 25, 1985. Swan — 10 pages. (101)

Entitlement — employees in same classification regularly working overtime while grievor on lay-off — contrary to provision in collective agreement; grievance allowed. *Re Heckett, Division of Harsco Corp. & U.S.W.A., Local 7577; Morris grievance*, May 23, 1985. Weatherill — 5 pages. (102)

Expiration of seniority rights — no entitlement; grievance denied. *Re P.P.G. Industries Canada Inc. & E.C.W.U., Local 14; Braund and Barnes grievances*, February 11, 1985. Majority: Palmer, Carrier, dissent: More — 9 pages. (103)

Junior employee recalled to work in contravention of senior, qualified grievor's rights; grievance allowed. *Re Falconbridge Limited & Sudbury Mine, Mill and Smelter Workers, Local 598; Smith grievance*, May 16, 1985. Majority: Knopf, McIntyre; dissent: Valin — 19 pages. (104)

### Res Judicata

Previous awards dealing with similar facts — awards referred to were not between the identical parties to the present grievance; objection denied. *Re West Nipissing General Hospital & O.N.A.; Evans grievance*. See (80) *supra*. (105)\*

### Retirement

Compulsory retirement — provision for extension in some circumstances — capacity to consent is not a duty to do so; grievance denied. *Re Victoria Hospital Corp. & O.N.A.; Wherry grievance*, May 28, 1984. E.B. Jolliffe — 23 pages. (106)†

### Scheduling of Work

Employer scheduled shift to start earlier than 6:30 contrary to agreement — manifest purpose of clause is to limit the times when shifts can begin; grievance allowed. *Re Fisher Controls Company of Canada Ltd. & U.A.W., Local 636; policy grievance*, October 30, 1984. Palmer — 7 pages. (107)

Off-shifting grievor on Sundays prior to statutory holiday in violation of seniority; grievance allowed. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Local 279; Sills grievance*, March 8, 1985. Majority: Emrich, Emond; dissent: Harnden — 19 pages. (108)

Reduction of paid hours resulting from a reduction of non-instructional hours — employer entitled to reduce non-instructional hours; grievance dismissed. *Re Bialik Hebrew Day School & The Assoc. of General Studies Teachers in Hebrew Day Schools; Moscoe grievance*, May 6, 1985. Freedman, Bloom, Israel — 14 pages. (109)

Requirement to consult prior to changing hours — failure to do so resulted in overtime owed to grievors; grievance allowed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 27; policy grievance*. Palmer — 6 pages. (110)

Union alleged that employer's shift schedule results in violation of agreement and lay-off — board established schedule in accordance with agreement; grievances allowed in part. *Re Edward Street Manor Nursing Home & O.N.A.; Dryden and Seeley and policy grievance*, May 15, 1985. Emrich, Mayne, Parry — 25 pages. (111)

Employer changing practice of assigning shift work — last change reverting to practice reflecting provisions of collective agreement; grievance dismissed. *Re Westin Hotel (Hotel Employers Group of Toronto) & The Hotel Employees Restaurant Employees, Local 75; union grievance*, September 11, 1985. Solomatenko — 9 pages. (112)†

Preferred days off not granted to grievor in one instance — no violation of collective agreement since company not required to schedule overtime to deal with situation; grievance dismissed. *Re Algoma Steel Corp. Ltd. & U.S.W.A., Local 2251; Jonah grievance*, September 12, 1985. Majority: Barton, Forbes; dissent: Woodcock — 8 pages. (113)

Shift preference — grievor with more seniority denied preference of shift — decision made on the basis of the company's operational requirements; grievance dismissed. *Re Inco Ltd. & U.S.W.A.; Patrie grievance*, September 13, 1985. Majority: Weatherill, McIntosh; dissent: Gerard — 7 pages. (114)

### Seniority

Loss of seniority — no entitlement to priority even though employee recalled had also lost seniority; grievance denied. *Re The Premier Group, Windsor, Ontario (Division of Lake Ontario Cement) & Teamsters, Local 880; Nikita grievance*, May 14, 1985. Gorsky — 12 pages. (115)\*†

Service outside unit — not confined to transferring out of the unit within the plant at which unit is located; grievance denied. *Re B.F. Goodrich Canada Inc. & United Rubber Workers, Local 677; policy grievance*, April 26, 1985. Palmer, Hoddle, Laurence — 6 pages. (116)

Settlement issued as award. *Re The Ontario Paper Company & Canadian Paper Workers, Local 84; policy grievance*, July 23, 1984. Palmer, Dinsdale, Weisbach — 6 pages. (117)

Calculation where employees in question having the same seniority date — rational choice not alphabetical order, but on basis of earlier employment on a part-time basis; grievor's application not affected by administrative error; grievance dismissed. *Re Ellenzweig Bakery Ltd. & R.W.B.C.W., Local 461; Spehar grievance*, September 17, 1985. Weatherill, Dahmer, Redford; addendum: Redford — 13 pages. (118)\*

### Severance Pay

Entitlement where grievor incarcerated for 45 months — employer wishes to change its original reasons for grievor's termination to disciplinary discharge in order to refuse to pay severance benefits — estoppel advanced; grievance allowed. *Re Canada Post Corp. & L.C.U.C.; Casemore grievance*, September 17, 1985. Kates — 10 pages. (119)

### Sick Leave

Illness immediately preceding and during vacation — failure to notify employer or request sick leave until much later; burden on grievor; grievance dismissed. *Re Queen Elizabeth Hospital & O.N.A.; Marok grievance*, September 12, 1985. Dunn — 8 pages. (120)†

### Sick Pay

Cosmetic surgery — in the absence of special and specific language provisions do not apply to deliberate disablement for cosmetic reasons; grievance denied. *Re F.J. Davey Home For The Aged & O.N.A.; LeBreton grievance*, May 23, 1985. Egan — 6 pages. (121)†

Payment during strike only in 'exceptional circumstances' — union alleged that dissimilar criteria applied to employees in similar situations; grievance allowed in part. *Re Canadian Broadcasting Corp. & N.A.B.E.T.; Morrow grievance*, April 17, 1985. P. Picher — 40 pages. (122)



Sick credits — entitlement to unrestricted use of accumulated sick credits not established; grievance denied. *Re Provincial Schools Authority & Federation of Provincial Schools Authority Teachers; policy grievance*, March 16, 1984. Palmer — 11 pages. (123)

Risk of abnormal pregnancy — grievor considered to be disabled as the result of an illness; grievance allowed. *Re Hotel Dieu St. Joseph Hospital & O.N.A.; Tellier grievance*, September 5, 1985. Majority: MacDowell, Switzman; dissent: Burnell — 31 pages. (124)\*

### Technological Change

Displacement by technological change alleged — grievance allowed in part. *Re Courtaulds (Canada) Inc. & Amalgamated Clothing and Textile Workers, Local 779; policy grievance*, May 9, 1985. Thorne — 13 pages. (125)

Meaning of 'major innovative change in equipment' — union alleged that because of major loss of employment it must be major innovative change; grievance denied. *Re Inco Limited & U.S.W.A., Local 6500; Gaudette grievance*, January 10, 1985. Majority: Palmer, Piggot; dissent: Hurst — 6 pages. (126)

### Transfer

Remedy for breach of transfer provision — in kind remedy granted of paid time off for time spent travelling to old reporting center located further from residence than new reporting center and travel expenses; supplementary award. *Re Bell Canada & Communications Workers; Worthington grievance*, May 15, 1985. Majority: Burkett, Beaulieu; dissent: Filion — 12 pages. (127)

### Union Rights

Directive from management prohibiting grievor from wearing union pins stating "boycott Eaton's" — employees free to express personal views at times other than working hours — company has the right to present politically neutral public image — dispute not between parties; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Local 414; Carmichael grievance*, April 19, 1985 — O'Shea — 16 pages. (128)\*†

Leave for conferences and similar official union functions — including monthly union meeting; grievance allowed. *Re Manville Canada & E.C.W.U.; union grievance*, May 10, 1985. E.B. Jolliffe — 18 pages. (129)†

Exclusive representational rights alleged infringed by series of monthly lunch meetings with members of management and various employees — company's progress in production and marketing discussed and questions invited from employees — company not treating employees as having representative role; grievance dismissed. *Re Rubbermaid Canada Inc. & U.A.W., Local 252; union grievance*, September 12, 1985. Weatherill — 7 pages. (130)\*

Intimidation and harassment because of union membership alleged — not established — anti-union animus on part of management not shown; grievance dismissed. *Re Seneca College & O.P.S.E.U.; policy grievance*, May, 1985. Swinton, Beaulieu, Brady — 14 pages. (131)

### Union Security

Refusal to deduct special disability plan assessment — question of whether assessment constituting increase in "dues"; adjournment to collect evidence. *Re Laurentien Hospital & C.U.P.E., Local 161; union grievance*, August 30, 1985. O'Shea — 8 pages. (132)†

### Vacations

Calculation of entitlement — collective agreement supercedes any company policy; grievance allowed. *Re F.W. Woolworth Co. Limited & R.W.D.S.U., Local 414; Muller grievance*, May 2, 1985. Verity, Sargeant, Dahmer — 8 pages. (133)

Calculation where part-time employee becoming full-time employee — entitlement to be based on total accumulated service; grievance allowed. *Re Soo and District of Algoma Credit Union Ltd. & O.P.E.I.U., Local 26; Nolan grievance*, May 7, 1985. Wilson — 6 pages. (134)†

Commencement of entitlement — no entitlement to take vacation in June where vacation is earned on basis of twelve months of continuous service to July in each year; grievance dismissed. *Re McKellar General Hospital & Service Employees Union, Local 268; Kry's grievance*, May 21, 1985. Wilson — 9 pages. (135)

Commencement of vacation — vacation period to commence on first day of employee's work week. *Re Consumers Glass Co. Ltd. & Aluminum, Brick and Glass Workers, Local 200G; policy grievance*, May 6, 1985. Little — 10 pages. (136)

### Welfare Plans

Dental plan — employer agreeing to provide 100% of cost of insurance premiums for all employees working 64 hours per month — employer failing to find a carrier, but still responsible for expenses incurred by employees; grievance allowed. *Re Simcoe Tavern (Oshawa) & Hotel Restaurant Employees, Local 280; union grievance*. See (34) *supra*. (137)†

### Work Assignment

Assignment of work to different bargaining unit — creation of new position cannot be reason for encroachment; grievors fail to show actual losses; grievances allowed in part. *Re Timmins, Corporation of the City of & C.U.P.E., Local 210; Dibrizzi, Senyuk grievances*, October 21, 1985. Dunn — 5 pages. (138)

Sex discrimination — scheduling of male nursing attendants to deal only with male patients constitutes sex discrimination; grievance allowed. *Re Sunnyside Home for the Aged & London and District Service Workers, Local 220; Deitz grievance*, September 17, 1985. Majority: P. Picher, McDonald; dissent: Boehmer — 38 pages. (139)\*

Splitting of one position into three — higher job rate requested; improper filling of vacancies alleged; splitting of job not done in bad faith; higher job rate not applicable; company obliged to post new positions. *Re Stelco (Hilton Works) & U.S.W.A., Local 1005; group grievances*, October 7, 1985. Brandt — 23 pages. (140)†

Use of part-time employees results in loss of work for full-time employees — prohibition in collective agreement; extra expense to company not an excuse; grievance allowed. *Re Van De Hogan Material Handling Inc. & Teamsters, Local 880; Couvillion et al grievance*, September 30, 1985. Hinnegan — 5 pages. (141)†

Work within job description of higher paying classification performed — grievor to be paid the difference; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; Bender and Marois grievance*, October 2, 1985. Brunner — 5 pages. (142)

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# Monthly Bulletin



Ontario

Ontario Ministry of Labour

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Miss Jean M. Read, Director

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persons involved in labour-management  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Arbitrators

Mr. Joseph W. Samuels is pleased to announce that, as of June 30, 1986, he will be devoting full-time to his work as a labour arbitrator, and other professional activities. Please direct enquiries to: Samuels Arbitration Services Limited, 281 Commissioners Road East, London, Ontario, N6C 2T3, telephone number (519) 681-3613.

Ms. Gail Brent has advised that she will be on vacation during the month of July, 1986 and will, therefore, not be available to attend arbitration hearings during that time.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of October, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Abandonment and unreasonable delay alleged — implied waiver of time constraints found; no evidence of actual or implied abandonment; preliminary objections dismissed. *Re Windsor, Corporation of the City of & C.U.P.E., Local 543; Haeffling et al grievance*, October 10, 1985. Majority: McLaren, Solberg; dissent: Prince — 19 pages. (1)

Employer contributions to pension plan — employer discontinuing additional contributions; pension plan not incorporated into collective agreement; grievance not arbitrable. *Re Appleton Electric Limited & Int'l. Molders and Allied Workers, Local 194; union grievance*, October 21, 1985. Weatherill — 10 pages. (2)



Res judicata alleged — wage compensation issue different from issue leading to such compensation; preliminary objection dismissed. *Re Sudbury, Corporation of City of & C.U.P.E., Local 1662; Clement, Brosseau grievance*, October 24, 1985. Davis — 12 pages. (3)†

Section 45 application made subsequent to initiation of collective agreement arbitration process — not allowed; section 44 should have been used; lack of jurisdiction found; preliminary objection allowed. *Re Blue Mountain Pottery Ltd. & U.S.W.A.; union grievance*, October 22, 1985. E.B. Jolliffe — 12 pages. (4)†

### Bargaining Unit

Inclusion of teachers of pre-natal classes sought — employment relationship not established; sub-contractor employer of teachers; grievance dismissed. *Re North York, Corporation of the City of & O.N.A.; union grievance*, October 8, 1985. Majority: Weatherill, McDermott; dissent: Switzman — 11 pages. (5)

Position of Systems Analyst Programmer — incumbent does not possess managerial authority in direction and control of other employees; position to be classified in bargaining unit; grievance allowed. *Re Timmins, Corporation of the City of & C.U.P.E., Local 434; policy grievance*, October 18, 1985. Davis — 12 pages. (6)†

### Bereavement Leave

Entitlement — grievor on vacation leave not entitled to bereavement leave according to strict purpose of bereavement leave; grievance dismissed. *Re Kingston Whig-Standard Co. Ltd. & Kingston Graphic Communication Union, Local 482; Wilson grievance*, October 7, 1985. Willes — 9 pages. (7)

### Classification

Change of duties within an established classification — no change in classification; grievance dismissed. *Re Simmons Limited & U.E., Local 513; Benoit grievance*, October 7, 1985. Gandz — 7 pages. (8)†

Entitlement to upgrading — central care functions of higher classification not performed; increase in volume of work insufficient to warrant reclassification; grievance dismissed. *Re Algonquin College & O.P.S.E.U.; Boland grievance*, October 8, 1985. Majority: Burkett, Gray; dissent: Ziemba — 17 pages. (9)

Entitlement to upgrading — core tasks sufficiently similar to raise rebuttable presumption of improper classification; alleged difference in managerial responsibility and decision-making not established; grievance allowed. *Re Public Service Alliance of Canada & Alliance Employees' Union; group grievance*, September 30, 1985. Abbott — 32 pages. (10)

Higher rate claimed as previously paid — estoppel not established; allocation of duties alone do not warrant higher rate; grievance dismissed. *Re Ontario Hydro & Ontario Hydro Employees, Local 1000; policy grievance*, October 18, 1985. Majority: Burkett, Abbott; dissent: Vincer — 10 pages. (11)

### Collection

Failure to remit union dues and Health and Welfare premiums, and to pay holiday pay — collective agreement clearly breached; grievance allowed. *Re Waverley Hotel & Bartenders and Beverage Dispensers, Local 280; policy grievance*, September 4, 1985. Eaton — 4 pages. (12)†

### Collective Agreement

Letter of understanding — letter expiring at same time as collective agreement expiring; no longer binding on parties. *Re Canadian Lake Carriers Association and The Algoma Steel Corporation & Seafarers Int'l. Union; Ansley and Eusebi grievance*, October 17, 1985. Brent — 14 pages. (13)

### Contracting Out

Emergency claimed — found foreseeable and due to management decisions; clearly bargaining unit work; treated as a union grievance; grievance allowed. *Re Timmins, Corporation of the City of & C.U.P.E., Local 210; Phillion grievance*, October 21, 1985. Dunn — 5 pages. (14)

Employees doing the work in question — employed by subcontractor and not by company; grievance dismissed. *Re Reed Decorative Products Ltd. & Canadian Paperworkers, Local 304; policy grievance*, October 24, 1985. Majority: Brunner, Mayer; dissent: Zagdanski — 12 pages. (15)

Store maintenance work — no restriction in collective agreement; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Local 414; policy grievance*, October 30, 1985. Saltman, Sargeant, McDonald; addendum: McDonald — 11 pages. (16)

Work not normally performed by employees — bargaining unit employees capable of performing work in question; lay-offs in existence; less cost if work done by bargaining unit employees; grievance allowed. *Re The Algoma Steel Corporation Limited & U.S.W.A., Local 2251; Abernot grievance*, October 17, 1985. Majority: Brent, Woodcock; dissent: Forbes — 10 pages. (17)†

### Damages

Union failing to use grievance procedures — company awarded fifty percent of amount of damages it suffered from union's actions. *Re Maritime Employers' Association & Int'l. Longshoremen's Association, Local 1842; policy grievance*, October 29, 1985. Brent — 14 pages. (18)

### Demotion

"Lead Hand" designation and pay withdrawn — not found to be a separate classification; action not a demotion; grievance dismissed. *Re Hilroy Ltd. a Division of Abitibi-Price Inc. & Canadian Paperworkers, Local 1144; policy grievance*, October 3, 1985. Barrett — 11 pages. (19)†

### Discharge

Absence for more than three consecutive working days — termination provisions independent of discipline; grievance dismissed. *Re Stelco Fastener and Forging Company — Stelco Inc. Swansea Works & U.S.W.A., Local 3767; Scott grievance*, September 20, 1985. Majority: Welling, White; dissent: Taylor — 9 pages. (20)

Absence from work station for prolonged period without satisfactory explanation established as culminating incident — poor past record; poor attitude; grievance dismissed. *Re McDonnell Douglas of Canada Ltd. & U.A.W., Local 1967; Rundle grievance*, October 3, 1985. Gorsky — 26 pages. (21)

Absence without notice — grievor claimed medical absence; arbitral discretion allowed when no "specific" penalty prescribed; reinstatement with suspension. *Re Dashwood Industries Ltd. & United Brotherhood of Carpenters and Joiners; Local 3054; Jacques grievance*, October 4, 1985. Barton — 7 pages. (22)†

Absenteeism — severe migraine headaches and stress-related illness; conditional reinstatement. *Re Mississauga, Corporation of the City of & A.T.U., Local 1572; Heath grievance*, October 21, 1985. Barrett — 13 pages. (23)†

Absenteeism; underlying problem of alcoholism — active treatment sought and maintained after discharge; conditional reinstatement. *Re Canada Post Corporation & C.U.P.W.; Lavigne grievance*, October 3, 1985. Burkett — 6 pages. (24)

Assault on abusive resident of Detoxification Centre — poor work record and previous incident similar to present one; grievance dismissed. *Re The Elizabeth Bruyere Health Centre & C.U.P.E., Local 1657; Crosier grievance*, October 11, 1985. Thorne — 15 pages. (25)†

Assault upon another employee — mitigating circumstances; provocation and prior lack of attention to enforce company rules; three-month suspension substituted. *Re Miracle Food Mart-Steinberg Inc. & U.F.C.W., Locals 175 and 633; Sawcuk grievance*, October 17, 1985. Hearn — 23 pages. (26)†

Culminating incident; absenteeism and chronic lateness — seniority and personal problems of grievor taken into account; conditional reinstatement without compensation. *Re Sault Ste. Marie, Corporation of the City of & United Transportation Union, Lodge 885; Veltri grievance*, August 24, 1985. Majority: Rayner, Carew; dissent: Forbes — 8 pages. (27)

Culminating incidents; alleged sexual harassment of fellow employee, insubordination to employer — sexual harassment not established; insubordination established; grievance dismissed. *Re St. Mary's General Hospital & London and District Service Workers, Local 220; Haas grievance*, September 9, 1985. Majority: Verity, Contini; dissent: Switzman — 16 pages. (28)

Culminating incident; mistaken labelling of blood sample — past record of carelessness including a similar blood error; counselling and progressive discipline applied but grievor unresponsive; higher standard of care in hospital; grievance dismissed. *Re Ottawa Civic Hospital & O.N.A.; Dunnah grievance*, October 1, 1985. Majority: Emrich, Mustard; dissent: Ballantyne — 42 pages. (29)

Dishonesty: "betting out of the box" — emotionally upset, drunk; rehabilitative measures undertaken by employee; conditional reinstatement, repayment of funds ordered. *Re Ontario Jockey Club & S.E.I.U., Local 528; Glugosh grievance*, October 23, 1985. Majority: Freedman, Tate; dissent: Bertuzzi — 37 pages. (30)

Falsifying reasons for absence — grievor not meeting onus of establishing illness; grievance dismissed. *Re Surgikos Canada Inc. & United Textile Workers, Local 510; Hudson grievance*, October 4, 1985. Hinnegan — 8 pages. (31)

Fraud — grievor admitted working for another company while receiving disability benefits; plea of mitigation disregarded due to grievor's deliberate dishonest acts; grievance dismissed. *Re American Motors Inc. & U.A.W., Local 1285; Kelly grievance*, September 30, 1985. H.D. Brown — 16 pages. (32)\*

Inability to deal with an emergency situation — employer bearing some responsibility for the inadequacies of the grievor's performance; fundamental trust and confidence necessary in employment relationship lacking; compensation for a period of six months in lieu of reinstatement. *Re Ault Dairies, a Division of Ault Foods Limited & I.U.O.E., Local 796; King grievances*, September 30, 1985. Majority: Devlin, Ball; dissent: Redford — 55 pages. (33)

Insubordination — refusal to meet with management without a union steward present; employer could have met grievor's request without difficulty; reinstatement with compensation and with disciplinary record intact. *Re Bell Canada & Communications Workers; Chaikalis grievance*, October 1, 1985. Majority: Springate, Beaulieu; dissent: Healy — 29 pages. (34)\*

Lateness — company warned grievor numerous times; company also offered employee assistance program; progressive discipline, company treated grievor fairly; grievance dismissed. *Re Westinghouse Canada Inc. & U.E.; Doherty grievance*, October 22, 1985. Knopf — 10 pages. (35)†

Part-time employee terminated after having not worked beyond a six-month period — valid exercise of management rights prerogative; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Local 414; Parisien grievance*, September 30, 1985. Boscarior — 6 pages. (36)†

Possession of narcotics on company property — breach of company rule; mere possession of marijuana not automatically meriting discharge; one-month suspension substituted. *Re Fruehauf Canada Incorporated & U.A.W., Local 2163; Fletcher grievance*, March 22, 1985. Palmer — 7 pages. (37)

Quit alleged — onus on grievor to show quit involuntary; grievor did not communicate change of intention immediately; grievance dismissed. *Re York University & York University Staff Association; George grievance*, October 4, 1985. Kruger — 12 pages. (38)†

Quit alleged — resignation chosen over threatened discharge — grievor fully aware of options and ramifications; no coercion in choice by management found; grievance dismissed. *Re Pumps and Softeners Ltd. & U.S.W.A., Local 2699; Lamb grievance*, September 26, 1985. Gorsky — 12 pages. (39)†

Reinstatement conditional on no alcoholic consumption — discharge for consumption of one beer away from company premises too severe; grievance allowed. *Re North American Steel Equipment Company Ltd. & U.S.W.A., Local 6662; Blanchard grievance*, September 30, 1985. Devlin — 9 pages. (40)

Reinstatement under terms of settlement — grievor entitled to return to former job; grievance allowed. *Re Carrier Canada Ltd. & Sheet Metal Workers, Local 575; Shilson grievance*, October 2, 1985. Wilson — 7 pages. (41)†

Sleeping on job — no prior disciplinary record; discharge too severe; length of suspension to be decided by parties; grievance allowed. *Re National Auto Radiator Mfg. Co. Ltd. & U.A.W., Local 195; Hunt grievance*, October 15, 1985. Welling — 11 pages. (42)†

Theft — goods of nominal value; discharge not warranted even though grievor a new employee; no breakdown of working relationship shown; three-month suspension without pay substituted. *Re Great Northern Apparel Inc. & Amalgamated Clothing and Textile Workers, Local 551; McMarow grievance*, October 16, 1985. Boscarior — 4 pages. (43)†

Theft — small amount taken; grievor completely co-operative; grievor's character not significantly cast in doubt by incident; six-month suspension substituted. *Re Zalev Brothers Ltd. & U.S.W.A.; Chabarek grievance*, September 27, 1985. R.J. Roberts — 11 pages. (44)†

Theft of company property — grievor suffering from paranoia; not amenable to cure; poor past record; offence premeditated — no special economic hardship; mental condition not negating intent nor constituting exceptional circumstance for leniency; grievance dismissed. *Re Ford Motor Company of Canada & U.A.W., Local 200; Rizok grievance*, July 21, 1985. Palmer — 9 pages. (45)



Theft of company property — value of goods taken substantial and theft systematic over 2½ years; consistent company response of discharge to theft; no excessive economic hardship; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Local 1000; Stewart grievance*, October 3, 1985. Burkett, Abbott, Vincer — 14 pages. (46)

Theft and tampering with mail — evidence not supported by corroborating facts; grievor a long-standing employee with no prior disciplinary record; grievance allowed. *Re Canada Post & C.U.P.W.; Menchion grievance*, October 25, 1985. Burkett — 22 pages. (47)

Unauthorized absence — culminating incident alleged; irreversible pattern of untrustworthiness not established; six-month suspension substituted. *Re Sudbury, Regional Municipality of & C.U.P.E., Local 6; Helm grievance*, October 28, 1985. Betcherman — 5 pages. (48)†

Unauthorized absence — no valid excuse; work record poor; progressive discipline applied; grievance dismissed. *Re Canadian Cannery Ltd. & U.A.W., Local 580; McKenty grievance*, October 10, 1985. Hinnegan — 7 pages. (49)

Unauthorized leaving of job site and consumption of alcohol on company premises — events proven; work record considered; grievance dismissed. *Re Rockwell International of Canada Ltd. & U.S.W.A., Local 3209; Higgs grievance*, September 28, 1985. Thorne — 16 pages. (50)†

#### Discipline

Absence without justification — grievor failing to keep company advised with regard to his absence; grievance dismissed. *Re Ault Dairies, a Division of Ault Foods Limited & I.U.O.E., Local 796; King grievances*, September 30, 1985. See (33) *supra*. (51)

Absenteeism because of illness — doctor's report did not elaborate reasons for illness; three-day suspension unreasonable; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; Thibeault grievance*, October 2, 1985. Brunner — 8 pages. (52)

Assault on patient — not an accident; victim's behaviour not an excuse; ten-day suspension upheld. *Re Extencicare & S.E.U., Local 220; Quipp grievance*, October 11, 1985. Majority: Kates, Riddell; dissent: Solberg — 16 pages. (53)

Attempted removal of property without permission — intention to steal not proven; grievor knew value of property; general deterrence impact considered; ten-day suspension upheld. *Re Dupont Canada Inc. & Kingston Independent Nylon Workers; Widdis grievance*, October 10, 1985. Majority: Brent, Binning; dissent: Grant — 9 pages. (54)

Careless driving of company van causing it to become stuck — damage to van by towing; failure to report damage; poor past record; grievance dismissed. *Re Denison Mines Limited & National Security Officers' Association of Canada; McCourt grievance*, October 3, 1985. O'Shea — 11 pages. (55)

Failure of grievor to report absence prior to commencement of her shift; grievor's illness an acceptable excuse; grievance allowed. *Re Toronto, Corporation of the City of & C.U.P.E., Local 79; Burness grievance*, October 15, 1985. Devlin — 8 pages. (56)

Failure to perform work assignments and unnecessary argument — grievor falsely reports work done; lack of knowledge and emotional state mitigate; two-day suspension substituted for five-day suspension. *Re Etobicoke, City of & C.U.P.E., Local 185; Amin grievance*, September 27, 1985. Kirkwood — 9 pages. (57)†

Falsifying time records — grievor left prior to working scheduled overtime; failure by grievor to explain when requested held fatal; grievance dismissed. *Re Toronto, Corporation of the City of & Metropolitan Toronto Civic Employees, Local 43; Knighton grievance*, October 1, 1985. Kirkwood — 6 pages. (58)†

Improper suspension alleged — confusion with regard to grievor's scheduling during shut-down; employer's sending grievor home not a disciplinary action; grievance dismissed. *Re The National Steel Car Limited & U.S.W.A., Local 7135; Rodd grievance*, October 10, 1985. Foisy — 7 pages. (59)†

Fight between employees — more horseplay than a fight; work records both good; one-month suspensions reduced to three days. *Re General Bakeries Ltd. & Bakery, Confectionery and Tobacco Workers, Local 264; Cirasella, Mosca grievance*, October 11, 1985. Weatherill — 8 pages. (60)\*

Insubordination — conflicting evidence; essentially a misunderstanding; verbal warning substituted for three-day suspension. *Re Collingwood Shipyards & U.S.W.A., Local 6320; Lamont grievance*, October 21, 1985. Boscarior — 5 pages. (61)†

Insubordination — failure to obey a direct and clear order resulting in three-day suspension; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; Berube grievance*, October 2, 1985. Brunner — 4 pages. (62)

Insubordination — subsequent booking off sick; payment for sick leave ordered; suspension upheld. *Re V.S. Services Limited & Workers' Union of Queen Elizabeth Hospital; Adams grievance*, October 7, 1985. O'Shea — 19 pages. (63)

Lateness and work performance unsatisfactory — existence of previous record; two-day suspension justified; grievance dismissed. *Re Sunnybrook Hospital & Sunnybrook Hospital Employees' Union, Local 777; Carballo grievance*, October 14, 1985. Foisy — 11 pages. (64)†

Leaving work early — progressive discipline applied; one-month suspension justified; grievance dismissed. *Re Mercedes Textiles Limited & Int'l. Woodworkers, Local 2-511; Cadieux grievance*, October 3, 1985. McCaughey — 4 pages. (65)†

Negligence resulting in damage to company property — just cause for discipline shown; grievance dismissed. *Re Hamilton Harbour Commissioners & C.U.P.E., Local 958; Wallace grievance*, August 21, 1985. Majority: Rose, Wace; dissent: Hopper — 6 pages. (66)

Negligence resulting in damage to machinery and lost production — employer not discharging onus of proof; grievance allowed. *Re Accurcast Die Casting Limited & Int'l. Molders and Allied Workers; Little grievance*, October 22, 1985. Samuels — 10 pages. (67)†

Overclaiming of mileage expenses — grievor fails to justify as common practice; no penalty increase by arbitrator justified; five-day suspension not unreasonable; grievance dismissed. *Re Vaughan, Corporation of Town of & C.U.P.E., Local 1090; Barak grievance*, October 25, 1985. Solomatenko — 26 pages. (68)†

Patient abuse — verbal abuse not proved on balance of probabilities; grievance allowed. *Re St. Joseph's Hospital, Guelph & C.U.P.E., Local 1033; Williams grievance*, October 17, 1985. Boscarior — 4 pages. (69)†

Refusal to work overtime — breach of collective agreement; no provocation; insufficient proof of mitigating circumstances; one-day suspensions upheld. *Re East York, Corporation of Borough of & C.U.P.E., Local 114; group grievance*, October 8, 1985. Devlin — 10 pages. (70)

Safety infractions — fire and destruction of company property; grievor previously prohibited from operating equipment involved; discipline reasonable; grievance dismissed. *Re Denison Mines Limited & U.S.W.A.; Silletta grievance*, September 26, 1985. M. Picher — 9 pages. (71)

Shouting and shoving match with supervisor — preliminary objection that settlement effected prior to suspension dismissed; discipline not progressive; five-day suspension reduced to two days. *Re Burlington Canada Inc. & Labourers' Union, Local 183; Oliveira grievance*, October 8, 1985. Barton — 11 pages. (72)†

Sleeping on job — intentional; a safety risk to others; previous incidents; work record examined; nine days', three hours' suspension upheld. *Re Kerr Addison Mines Ltd. & Kerr Addison Employees Association; Eadie grievance*, October 3, 1985. Sheppard — 12 pages. (73)

Suspension while criminal charges pending — criminal charges against grievor withdrawn for lack of evidence; non-disciplinary suspension to protect company's legitimate interests while charges outstanding justified; grievor entitled to return to work once charges dropped. *Re Canada Wire and Cable Limited & U.A.W., Local 1285; Adams grievance*, October 3, 1985. Brent — 14 pages. (74)

Transfer to another position in same classification — onus on union to prove discipline; inferred from type of action rather than effect; grievance allowed. *Re Toronto Star Newspapers Ltd. & Southern Ontario Newspaper Guild; Bill grievance*, October 7, 1985. Dunn — 10 pages. (75)†

Unauthorized absence from job site and verbal abuse and threatening of supervisor — incidents proven; grievor shows no remorse; five-day suspension not unreasonable; grievance dismissed. *Re Page-Hersey Works, Stelco Tube and Pipe Co. & U.E., Local 523; Timmers grievance*, October 29, 1985. Hearn — 12 pages. (76)†

Verbal abuse of another employee — management fails to investigate prior to discipline; other employee clearly not blameless and not punished; conflicting evidence; grievance allowed. *Re Webster Mfg. (London) Ltd. & Int'l. Molders and Allied Workers, Local 49; Britton grievance*, October 22, 1985. Weatherill — 10 pages. (77)

Unprofessional behaviour and rude language to patient — culpable behaviour; minimum penalty imposed already; grievance dismissed. *Re Wellesley Hospital & O.N.A.; Koost grievance*, October 4, 1985. Davis — 10 pages. (78)†

Verbal abuse of supervisor — manner threatening, however an isolated incident; excellent work record and arbitral trend of leniency cited; written warning substituted for two-day suspension. *Re Canadian Fabricated Products & U.A.W., Local 325; McNaughton grievance*, October 16, 1985. Black — 9 pages. (79)†

#### Estoppel

Vacation granted and then rescinded by County Board — equity and fair play raise an estoppel against employer resulting from a granted indulgence; grievance allowed. *Re Huronview Home for the Aged (The Corporation of the County of Huron) & S.E.U., Local 218; individual grievance*, October 10, 1985. R.J. Roberts — 7 pages. (80)†

#### Evidence

Admissibility — notices of discipline prior to a "good" service review report may be applied for determining severity of discipline for subsequent misconduct; evidence receivable. *Re Toronto Hydro Electric System & C.U.P.E., Local 1; Ulman grievance*, September 30, 1985. O'Shea — 12 pages. (81)

Opinion evidence — witness asked about appropriate penalty in discharge case; the very question the arbitrator should answer; question disallowed; interim award. *Re Rockwell International of Canada Ltd. & U.S.W.A., Local 3209; Higgs grievance*, August 1, 1985. Thorne — 4 pages. (82)†

#### Grievance Procedure

Timeliness — collective agreement imposing absolute bar; no waiver found; grievor should have met time limits; Board without jurisdiction to hear merits; grievance dismissed. *Re Central Algoma Board of Education & Ontario Secondary School Teachers' Federation, Central Algoma Division, District 30; union grievance*, September 10, 1985. McKechnie, Bernardi, McNeil — 10 pages. (83)

Timeliness — delay in filing a grievance concerning vacation entitlement; time limits directory rather than mandatory but delay extreme; no relief ordered. *Re Peterborough Board of Commissioners of Police & Peterborough Police Association; Laescher grievance*, September 27, 1985. Saltman — 14 pages. (84)

Timeliness — extension of time limit not warranted in circumstances; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; group grievance*, October 2, 1985. Brunner — 5 pages. (85)

Timeliness — legitimate misunderstanding; no substantial prejudice to employer; discharge faced by grievor; grievance to be heard; interim award. *Re St. Joseph's Hospital & London and District Service Workers, Local 220; Khanna grievance*, September 27, 1985. Davis — 11 pages. (86)†

#### Holidays

Qualifying days — for individual holiday where strike; qualifying days not worked; grievance dismissed. *Re Burns Meats Limited & U.F.C.W.; union grievance*, October 22, 1985. Majority: Samuels, Cook; dissent: Zimmerman — 10 pages. (87)

#### Holiday Pay

Calculation — based on average hourly earnings two weeks prior but new hourly rate in effect on holiday; calculation to be based on rate in effect on holiday; grievance allowed. *Re General Tire Canada Limited & United Rubber Workers, Local 536; policy grievance*, October 17, 1985. Weatherill — 11 pages. (88)

Evening shift not paid holiday pay — shift taking date from time at which it commences; grievance allowed. *Re Becker Milk Company Ltd. & Milk and Bread Drivers, Local 647; Corbin grievance*, October 4, 1985. Wilson — 9 pages. (89)†

#### Illness

Delay in return to work — employer requiring written confirmation of grievor's fitness; grievor would have worked on scheduled days; grievance allowed. *Re Ault Dairies, a Division of Ault Foods Limited & I.U.O.E., Local 796; King grievances*, September 30, 1985. See (33, 51) *supra*. (90)

Proof of illness policy — patient authorization form inconsistent with collective agreement to extent it requires completion before employee return to work and also requirement that diagnosis be divulged in order to justify absence; grievance allowed. *Re St. Lawrence Lodge & O.N.A.; policy grievance*, October 11, 1985. Emrich — 30 pages. (91)\*†

Refusal of employer to allow grievor to return to work — employer entitled to satisfy itself as to the fitness of its employees; grievance dismissed. *Re Beacon Hill Lodges of Canada Ltd. & S.E.U., Local 210; Micallef grievance*, October 21, 1985. Majority: Hinnegan, Hussey; dissent: Borg — 22 pages. (92)



Return to work — grievor providing medical certificate; medical certificate inadequate; grievor to produce more comprehensive certificate; grievance allowed subject to conditions. *Re Eastern Steelcasting (Division of Ivaco Inc.) & U.S.W.A., Local 8794; Lalonde grievance*, October 3, 1985. Roach — 17 pages. (93)†

Return to work — receipt of report from Company doctor concurring in grievor's doctor's assessment that grievor fit to return to work by certain date; company not entitled to delay return further; grievance allowed. *Re Edwards, Unit of General Signal Limited & U.S.W.A.; Pipe grievance*, October 3, 1985. Brent — 6 pages. (94)

### Job Evaluation

Evaluation of new position to set job rate — parties agreed on relevant factors; higher classification sought distinguishable on factors of complexity, judgement and independence of action; grievance dismissed. *Re Barrie, Corporation of the City of & C.U.P.E., Local 2380; Johnston grievance*, October 8, 1985. Brent — 17 pages. (95)

New job classification — two previous job classifications combined; highest rate of pay of the two must be paid; actual division of time not relevant; grievance allowed. *Re Nacan Products Ltd. & E.C.W.U., Local 819; policy grievance*, October 3, 1985. O'Shea — 12 pages. (96)†

### Job Posting

Improper classification alleged — job posting appropriate to the vacancy required to be filled; grievance dismissed. *Re Salvation Army Grace Hospital & O.P.S.E.U., Local 142; union grievance*, October 11, 1985. Majority: Weatherill, Burnell; addendum: Burnell; dissent: McManus — 13 pages. (97)

Qualifications changed in posting — new position not created; grievance improperly framed; grievance dismissed. *Re Sperry Inc. & U.A.W., Local 641; Perkins grievance*, October 1, 1985. Hinnegan — 10 pages. (98)\*

### Lay-Off

Advance notice of short-term lay-off — company only required to notify union "as soon as possible"; grievance dismissed. *Re CAE Diecast Ltd. & I.A.M., Local 2719; policy grievance*, September 24, 1985. Welling — 7 pages. (99)†

Bargaining unit members laid off while members outside the bargaining unit continuing to work — employer obliged to continue employing casual workers while work is available; grievance allowed in part. *Re Midland Board of Park Management & O.P.S.E.U., Local 328; Hoy and Hoy grievances*, September 28, 1985. Majority: E.B. Jolliffe, Dalrymple; dissent: Beaulieu — 14 pages. (100)

Bumping rights claimed — provision for "transfer" inconsistent with bumping rights; grievance dismissed. *Re Normick Perron Inc. (Cochrane) & Lumber and Sawmill Workers, Local 2995; Blackburn grievance*, October 22, 1985. Majority: Barton, Brousseau; dissent: Fyshe — 7 pages. (101)

Bumping rights; training — grievor possessing basic prerequisites for job; training insufficient if merely an opportunity to train oneself; grievance allowed. *Re Rio Algom Limited & U.S.W.A., Local 5980; Giekes grievance*, July 5, 1985. Palmer — 6 pages. (102)

Disability leave — fitness of grievor to return to active duty status not established; lay-off improper; grievance allowed. *Re The DeHavilland Aircraft of Canada Ltd. & U.A.W., Local 112; Kulas grievance*, September 30, 1985. Gorsky — 12 pages. (103)

Inability to do job after trial period — no breach of lay-off provisions; grievance dismissed. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Local 79; Balbosa grievance*, October 16, 1985. Majority: Burkett, Milks; dissent: McDonald — 19 pages. (104)

Job performance — grievor bumped to lower level job; grievor not attaining acceptable level of job performance within four-week period; supervisor acting properly in assessment; grievance dismissed. *Re Ontario Hydro and Ontario Hydro Employees, Local 1000; Schlifer grievance*, September 9, 1985. Majority: P. Picher, Abbott; dissent: Vincer — 31 pages. (105)

Qualifications — employer set standards and test found fair and reasonable; grievance dismissed. *Re Collingwood Shipyards & U.S.W.A., Local 8234; Richardson and McKean grievances*, October 2, 1985. Barrett — 14 pages. (106)†

Qualifications — grievor with greater seniority failed to establish his ability to perform work; grievance dismissed. *Re Conestoga College & O.P.S.E.U.; Rennie grievance*, October 23, 1985. Majority: H.D. Brown, Ubels; dissent: Ziemba — 16 pages. (107)

Wage rate where bumping — rate of job bumped into applies; grievance dismissed. *Re Dashwood Industries Ltd. & United Brotherhood of Carpenters and Joiners, Local 3054; group grievance*, September 30, 1985. McLaren — 15 pages. (108)†

### Overtime

Distribution improper — in kind remedy not appropriate; grievance allowed. *Re Colonial Cookies (Kitchener) Ltd. & U.F.C.W., Local 617P; O'Connell grievance*, October 8, 1985. Majority: McCulloch, Walsh; did not concur: McCord — 8 pages. (109)

Entitlement — major repairs to furnace usually performed by classification other than the grievor's classification during the week and on weekends; grievance dismissed. *Re Kelsey-Hayes Canada Limited & U.A.W., Local 636; Kalbfleisch and Pimental grievances*, August 26, 1985. Palmer — 5 pages. (110)

Remedy for improper distribution — in kind relief not possible when only one employee in classification; monetary relief ordered. *Re Sohio Electro Minerals Company & U.S.W.A., Local 4151; Hicks grievance*, October 8, 1985. Majority: Brent, Hynd; dissent: Orsini — 9 pages. (111)\*

Scheduling — company entitled to have any qualified person within the crew perform the work when there is no person in the classification available; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5417; group grievance*, October 2, 1985. Brunner — 5 pages. (112)

Untimely protest of overtime assignment to junior employee; had full knowledge of rights at time — effective waiver of overtime priority rights found; grievance dismissed. *Re Timmins, Corporation of the City of & C.U.P.E., Local 210; Pretula grievance*, October 21, 1985. Dunn — 3 pages. (113)

### Overtime Pay

Overtime work contiguous with regular shift — not a "call-out" situation; no additional trips required; collective agreement considered; grievance dismissed. *Re Union Gas Ltd. & E.C.W.U.; Ball grievance*, October 25, 1985. Majority: McLaren, Storie; dissent: Nelson — 8 pages. (114)

Shift worker — not excluded from overtime pay clause; time over normal eight-hour shifts found to be overtime; grievance allowed. *Re Timmins, Corporation of the City of & C.U.P.E., Local 210; Cardinal grievance*, October 21, 1985. Dunn — 4 pages. (115)

#### Premium Pay

Callback — alleged "callback" during papal visit; situation not a callback within meaning of the collective agreement; grievance dismissed. *Re Metropolitan Toronto Board of Commissioners of Police & Metro Toronto Police Association; group grievance*, October 11, 1985. Weatherill — 11 pages. (116)

Pay premium requested for working third consecutive weekend — hospital scheduled grievor for working three consecutive weekends and responsible for premium pay even during Christmas period; grievance allowed. *Re Hamilton Civic Hospitals & O.N.A.; Winter grievance*, August 31, 1985. Rose, Herbert, McDermott — 17 pages. (117)

#### Probationary Employee

Calculation of probationary period — days of absence to be added to probationary period; grievance dismissed. *Re Brampton, Corporation of the City of & A.T.U., Local 1573; Bilton grievance*, October 10, 1985. Joyce — 12 pages. (118)†

#### Procedure

Union failing to attend hearing — onus on union in non-disciplinary matter; no case for company to answer; grievance dismissed. *Re S.D. Adams Welded Products Ltd. & U.S.W.A., Local 8747; union grievance*, October 28, 1985. Aggarwal — 9 pages. (119)

#### Promotion

Procedure — posting, transfer and promotion procedures of agreement not followed; no formal interview conducted with grievor; grievance allowed, grievor awarded position. *Re A.E. Long Company Ltd. & E.C.W.U., Local 620; King grievance*, October 9, 1985. Hearn — 12 pages. (120)\*†

Qualifications — "approximately equal" more exact test than "relatively equal"; incumbent found to be clearly superior; grievance dismissed. *Re Peterborough Civic Hospital & O.P.S.E.U., Local 345; Lloyd grievance*, September 30, 1985. Little — 12 pages. (121)†

Qualifications — employer's decision to promote a junior must be based on substantial grounds; employer correct in this case; grievance dismissed. *Re University of Toronto & C.U.P.E., Local 230; Cummings grievance*, October 11, 1985. Majority: Dunn, Cook; dissent: Berry — 11 pages. (122)

Qualifications — grievor lacking requisite course; course taken shown similar but not equivalent; grievor not entitled to "learner" period; grievance dismissed. *Re Edwards Ltd. & U.S.W.A.; Fortier grievance*, October 9, 1985. Brent — 9 pages. (123)

Qualifications — grievor possessing academic and experience qualifications but lacking well developed organizational, interpersonal, treatment and communication skills; grievance dismissed. *Re The Ottawa and District Association for the Mentally Retarded & C.U.P.E., Local 1521; Arbour grievance*, August 26, 1985. Majority: Abbott, Barber; dissent: Head — 13 pages. (124)

Qualifications — grievor's qualifications not equal to successful applicant; employer applying promotion criteria correctly; grievance dismissed. *Re Elliot Lake, Corporation of the Town of & C.U.P.E., Local 170; Laframboise grievance*, September 27, 1985. Majority: Brent, Bernardi; dissent: Gerard — 15 pages. (125)

Qualifications — incumbent from outside possessing superior experience, office and organizational skills; grievance dismissed. *Re Home Care Programme for Metropolitan Toronto Incorporated & Home Care Employees' Association; Rakocevic grievance*, October 2, 1985. Dunn — 11 pages. (126)

Selection of successful candidate to be made from those applicants whose names appear on the certified candidate list after initial screening by Commissioner of Personnel — only grievor's name on list; entitled to position over outside employee; grievance allowed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Girdhar grievance*, September 24, 1985. Rayner — 13 pages. (127)

#### Recall

Bumping rights — collective agreement allows bumping employee ten days grace period; grievor fails to prove probability of proficiency within the ten days; grievance dismissed. *Re Canadian General Electric Co. Ltd. & U.E., Local 507; Eriksen grievance*, October 24, 1985. Barrett — 7 pages. (128)†

#### Redundancy

Interest on termination allowances requested — ex gratia payments paid by employer to increase grievors' ongoing pension benefits as well as termination allowances exceeding amount of interest requested; grievance dismissed. *Re Bell Canada & Communication Workers; Biggs and Anderson grievance*, September 26, 1985. Majority: P. Picher, Sinclair; dissent: Robbins — 19 pages. (129)

"Length of continuous service" not dependent on full-time or part-time load — no pro-rating of part-time teachers; grievance allowed. *Re Sault Ste. Marie Roman Catholic Separate School Board & O.E.C.T.A.; union grievance*, August 31, 1985. Majority: P. Picher, Griffin; dissent: Forbes — 12 pages. (130)\*

#### Scheduling of Work

Request for exchange of duty denied — evidence established that employer acted reasonably in treatment of request; grievance dismissed. *Re Queensway General Hospital & O.N.A.; group grievance*, September 25, 1985. Majority: Brandt, MacDougall; dissent: O'Neil — 17 pages. (131)

#### Seniority

Temporary recall for a fixed period and then subsequent lay-off — employee entitled to exercise seniority rights as of date of subsequent lay-off; grievance allowed. *Re Falconbridge Ltd. & Sudbury Mine, Mill & Smelter Workers, Local 598; Chartier grievance*, October 24, 1985. Majority: Burkett, McIntyre; dissent: Valin — 33 pages. (132)

Computation for casual part-time workers — collective agreement does not create retroactive seniority from before date of agreement; grievance dismissed. *Re Charlotte Eleanor Englehart Hospital & O.N.A.; policy grievance*, October 7, 1985. Welling — 14 pages. (133)†

Transfer of bargaining unit employee outside bargaining unit and later return to bargaining unit with no break in employment; employee to be credited with previous continuous service in the bargaining unit; grievance dismissed. *Re Birchwood Terrace Nursing Home & U.F.C.W., Local 409; Romanuk grievance*, October 2, 1985. Joyce — 6 pages. (134)\*†

#### Sick Leave

Accumulation at time of retirement — employer not allowed to pro-rate sick leave credits retroactively at end of school year; grievance allowed. *Re Peterborough Board of Education & Peterborough Women Teachers' Federation; Sowerby grievance*, October 7, 1985. Majority: McKechnie, Sanders; dissent: McCleery — 13 pages. (135)



**Sick Pay**

Proof of illness — unreasonable to require employees seeking sick pay to see a doctor on the first day of illness; grievance allowed. *Re Rio Algom Limited & U.S.W.A., Local 5980; policy grievance*, July 5, 1985. Palmer — 6 pages. (136)

**Technological Change**

Ergonomic modifications — company to consult with union on improvements to GDS work station; declaratory decision. *Re Canada Post & C.U.P.W.; policy grievance*, October 16, 1985. Burkett — 5 pages. (137)

**Transfer**

Transfer to higher classification alleged — not established; assignment of some increase in complexity and responsibility within normal development of grievor's classification; grievance dismissed. *Re Rubbermaid Canada Inc. & U.A.W., Local 252; Sutherland grievance*, October 7, 1985. Weatherill — 6 pages. (138)

**Union Rights**

Prohibition of union activity on employer's premises — not prohibiting discussions during lunch and break period; grievance allowed. *Re Gardiner's Super Market Ltd. & S.E.U.; policy grievance*, October 8, 1985. Punnett — 3 pages. (139)

**Union Security**

Failure to deduct union dues and provide a list of employees authorizing deductions — collective agreement requiring employer to deduct union dues and provide a list of employee deductions; grievance allowed. *Re Golden Griddle Restaurant (470469 Ontario Ltd.) & Hotel Employees, Restaurant Employees, Local 75; union policy grievance*, October 12, 1985. Baum — 6 pages. (140)†

**Vacations**

Scheduling — grievor's preference solicited but not granted; within management rights; grievance denied. *Re Niagara, Regional Municipality of & C.U.P.E., Local 1287; Maddolini grievance*, September 24, 1985. Lerner — 13 pages. (141)†

**Wages**

Calculation of shift premium — standard hourly wage rate to include the COLA adjustment payable at the time the work is performed; grievance allowed. *Re American Can Canada Inc. & U.S.W.A.; policy and individual grievances*, October 4, 1985. Knopf — 13 pages. (142)

Excess hours worked — extra duties to be discussed with supervisor prior to assumption — grievor's responsibility to do so; partial compensation allowed for initial period of duties. *Re University of Toronto & Canadian Union of Educational Workers, Local 2; Albert grievance*, October 3, 1985. Burkett, Cook, Pellettier — 23 pages. (143)

Improperly scheduled "on call" time — within regular shift; not overtime; still worthy of compensation at regular rate; grievance allowed. *Re Sudbury, Corporation of the City of & C.U.P.E., Local 1662; Clement, Brosseau grievance*, October 24, 1985. See (3), *supra*. (144)

Incentive rates — unit employees operating equipment for setting production rates; change in ratings allowable; non-members cannot be used to set production standards. *Re Emhart Canada Ltd., International Hardware Division & Int'l. Molders and Allied Workers, Local 428; policy grievance*, October 17, 1985. Weatherill — 9 pages. (145)

Increases not paid — Ministry restrictions and accounting practices no excuse; grievance allowed. *Re Noel Ambulance Service Ltd. & C.U.P.E., Local 2002; union grievance*, October 24, 1985. McCaughey — 2 pages. (146)†

Piece work rates — employer unilaterally decreasing piece rates without consulting union; grievance allowed. *Re Outdoor Outfits Limited & United Garment Workers, Local 253; group grievance*, September 26, 1985. McKechnie — 5 pages. (147)†

Retroactivity: former employees terminating employment at commencement of strike — retroactive pay applying only to employees returning to work after strike; grievance dismissed. *Re Dowty Canada Limited & I.A.M., Lodge 965; union policy grievance*, October 11, 1985. O'Shea — 14 pages. (148)†

Temporary employee becoming permanent employee after seven months — grievor not required to serve six-month probationary period after becoming permanent employee; estoppel not applicable; grievor entitled to be paid at start rate for permanent employee when working as such. *Re O.P.S.E.U. & The Ontario Public Service Staff Union; Williams grievance*, September 26, 1985. Saltman — 18 pages. (149)

Transfer from casual part-time to regular part-time — previous hours worked are to be considered in grievors' placement on salary grid; grievance allowed. *Re Charlotte Eleanor Englehart Hospital & O.N.A.; group grievance and Smith grievance*, October 7, 1985. Welling — 14 pages. (150)†

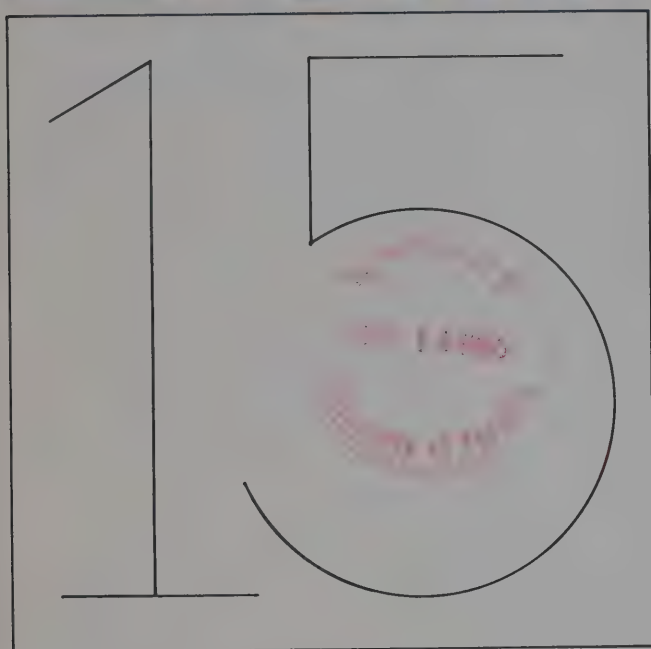
**Welfare Plans**

Dental plan contributions — employer paid only for hours worked by employees who had signed dental plan cards rather than for hours worked by all bargaining unit employees; violation of collective agreement; grievance allowed. *Re Birchwood Terrace Nursing Home & U.F.C.W., Local 409; policy grievance*, October 2, 1985. Joyce — 7 pages. (151)†

Disability insurance payments discontinued to claimant — employer's obligation to arrange coverage and pay premiums; employer not obliged to pay benefits; grievance dismissed. *Re Great Lakes Forest Products Ltd., Thunder Bay Woodlands Operations & Lumber and Sawmill Workers, Local 2693; Kierrosmaki grievance*, October 15, 1985. Majority: Springate, Holt; dissent: Johnston — 22 pages. (152)

Obligation of employer to commence premium payments for health and welfare benefits — Blue Cross Extended Health Plan ninety days from date of transfer to full-time unit; three months after date of transfer or date of application for benefits for dental plan; grievances allowed in part. *Re Elgin Manor (Corporation of the County of Elgin) & London and District Service Workers, Local 220; Ashton and Brown grievances*, October 4, 1985. Saltman, Hyde, Beaulieu — 11 pages. (153)

# Monthly Bulletin



Ontario Ministry of Labour

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persons involved in labour-management  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filled with the Office of Arbitration during the month of November, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Compensation rates prescribed by *Inflation Restraint Act* — rates enforceable through grievance arbitration. *Re Canadian Medical Laboratories & O.P.S.E.U., Locals 206 and 221; policy grievance*, November 20, 1985. Majority: Freedman, Beaulieu; dissent: Saxe — 34 pages. (1)

Discharge of probationary employee — no specific rights to grieve in collective agreement and no implied substantive rights when agreement viewed as a whole; grievance dismissed. *Re Lake Ontario Steel Co. Ltd. & U.S.W.A., Local 6571; Azzopardi, Manchen grievance*, November 7, 1985. Davis — 10 pages. (2)†



Lateness in filing — collective agreement time limit cannot derogate from statutory right; delay prima facie unreasonable, but no prejudice shown; grievance arbitrable. *Re Metropolitan Toronto Board of Commissioners of Police & Metropolitan Toronto Police Association; Dixon grievance*, November 13, 1985. Saltman — 8 pages. (3)

Termination of broker's contract — arbitrator unwilling to imply a "just cause" limitation in reference to a group of brokers; employer's power to terminate brokers is unfettered; grievance dismissed. *Re Glengarry Transport Ltd. & United Brewery Workers, Local 205; Salmon grievance*, November 18, 1985. Abbott — 10 pages. (4)

#### Bargaining Unit

Director of communications and public relations — not a secretarial position and not covered by collective agreement; grievance dismissed. *Re The Ontario English Catholic Teachers' Assoc. & Deputy General Secretary, Dept. Coordinators and Staff Assistants employed by the Assoc., O'Connor grievance*, November 13, 1985. Majority: Brunner, Noonan; dissent: McIntyre — 20 pages. (5)

#### Bereavement Leave

Death of father-in-law — grievor did not attend funeral, but made payment arrangements to foreign country; constitutes arrangement of funeral; grievance allowed. *Re V.S. Services Ltd. & The Workers' Union of Queen Elizabeth Hospital; Beaumont grievance*, October 18, 1985. O'Shea — 10 pages. (6)

#### Board of Arbitration

Remedy where continuing violation by company of temporary transfer provision of collective agreement — order that company follow the terms of the collective agreement in the future; grievance allowed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; union grievance*, November 22, 1985. Joyce — 14 pages. (7)†

#### Classification

Higher classification of welder claimed — grievor performing the significant duties associated with higher classification; grievance allowed. *Re Magline of Canada Limited & U.S.W.A., Local 8229; group grievance*, October 28, 1985. McCaughey — 5 pages. (8)†

New employee wage scale applied in spite of appointment to higher classification — collective agreement considered; reclassification removes "new employee" status; grievance allowed. *Re P.P.G. Industries Canada Inc. & E.C.W.U., Local 14; Kowalchuk grievance*, November 18, 1985. Majority: Brandt, Buchanan; dissent: White — 8 pages. (9)

#### Collective Agreement

Notice to bargain — when no notice to bargain given under the terms of the collective agreement, statutory provisions under the Act apply; exercise of statutory right cannot be construed as a violation of the collective agreement; grievance dismissed. *Re Hamilton Automatic Vending Co. Ltd. & Cement, Lime, Gypsum and Allied Workers, Local 576; management grievance*, November 19, 1985. Davis — 5 pages. (10)†

#### Demotion

Two medication errors by grievor not caused by lack of training or inability to understand requirements of job — grievor's accreditation to dispense drugs not withdrawn by Ministry although employer mistakenly acted on this assumption; demotion disciplinary for which just cause not established; grievance allowed. *Re Golden Manor Home For The Aged (City of Timmins) & C.U.P.E., Local 1140; Glazier grievance*, November 5, 1985. Dunn — 10 pages. (11)

#### Discharge

Absence without satisfactory explanation — grievor absent from work for two weeks; no attempt to contact management during that period; worked at another job during his two-week absence; grievance dismissed. *Re Lake Ontario Steel Co. Ltd. & U.S.W.A., Local 6571; Edmonson grievance*, November 11, 1985. Barrett — 10 pages. (12)†

Absenteeism — company aware of grievor's personal problems; absences not totally culpable; three-day suspension substituted; conditional reinstatement. *Re Rayco Stamping Products Ltd. & C.L.A.C.; MacLelland grievance*, November 7, 1985. Barton — 10 pages. (13)†

Absenteeism — non-disciplinary dismissal prima facie justified; grievor shows no evidence of ability to improve; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Thompson grievance*, November 15, 1985. Hinnegan — 8 pages. (14)

Abuse of leave for injury on duty — grievor unwise to play in band while on leave; written reprimand appropriate; verbal abuse of supervisors insubordinate notwithstanding that it occurred off-duty — reinstatement without compensation. *Re Canada Post Corp. & Letter Carriers Union of Canada; Tyrrell grievance*, November 4, 1985. E.B. Jolliffe — 28 pages. (15)

Assault upon a customer — grievor the aggressor; no provocation; grievance dismissed. *Re Brockton Hotel & Hotel and Restaurant Employees, Local 280; Hoffman grievance*, November 4, 1985. Foisy — 7 pages. (16)†

Automatic termination clause — grievor absent longer than twelve months due to disability; clause to be construed strictly and of no relevance in work-related accident situation; grievance allowed. *Re Minutex Canada Ltd. & U.S.W.A.; Moretti grievance*, November 21, 1985. Brunner — 8 pages. (17)

Culminating incident; failure to clean up work areas — poor prior record; progressive discipline applied; grievor deliberately attempting to mislead Board at hearing; no reasonable basis upon which to mitigate penalty; grievance dismissed. *Re Dominion Colour Co. Ltd. & Teamsters, Local 1880; Clarke grievance*, October 31, 1985. Majority: H.D. Brown, Heard; dissent: Phillips — 45 pages. (18)

Culminating incident — grievor failing to comply with 12-hour shift guidelines; employer enforcing call-in procedure inconsistently; two-month suspension substituted. *Re Dow Chemical Canada Inc., Arrow Road & Graphic Communications Int'l. Union, Local 466; Thompson grievance*, October 28, 1985. Majority: Devlin, Billings; dissent: McDonald — 19 pages. (19)

Culminating incident — grievor improperly doing job and creating a safety hazard; meaning of "related offence" in review of past record; particulars of general allegation of unsatisfactory work performance to be assessed to determine whether prior incident of same genre as culminating incident; poor record — progressive discipline applied; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited & United Brewery Workers; Smith grievance*, October 3, 1985. H.D. Brown — 14 pages. (20)

Dishonesty — grievor was alleged to have charged for work she did not do; at most the evidence showed a misunderstanding; grievance allowed. *Re Bilt-Rite Upholstering Co. Ltd. & Upholsterers' Int'l. Union; Singh grievance*, August 14, 1985. Swinton — 17 pages. (21)

Dishonesty — shortage in postage credit; explanations false; incident not isolated; grievance dismissed. *Re Canada Post Corp. & C.U.P.W.; Callahan grievance*, October 28, 1985. P. Picher — 22 pages. (22)

Insubordination and threatening supervisor — past record considered; persistently aggressive conduct pattern established; culminating incident; grievance dismissed. *Re Infasco Nut Co. & U.S.W.A., Local 9015; Ramrup grievance*, November 13, 1985. Boscarol — 7 pages. (23)†

Insubordination — grievor failed to perform job demanded of him by his supervisor; job not part of grievor's job classification; grievance allowed. *Re Rayco Stamping Products Ltd. & C.L.A.C.; Nelson grievance*, November 25, 1985. Lerner — 10 pages. (24)†

Insubordination — refusal to perform an assignment and verbal threats and abuse to foreman; poor past record, but conduct tolerated by company; progressive discipline poorly enforced; grievance allowed in part. *Re General Tire Canada Limited & United Rubber Workers, Local 536; Lewis grievance*, October 17, 1985. Joyce — 12 pages. (25)†

Intimidation and physical violence; assault on supervisor and profane language — mitigation due to economic circumstances of grievor and his family; six-month suspension substituted for discharge. *Re Keeprite Inc. & Keeprite Workers' Independent Union; Boswell grievance*, November 25, 1985. Lerner — 32 pages. (26)

Intoxication while at work and charged with serving intoxicated persons — progressive discipline not followed; three-month suspension substituted. *Re Acadian Tavern & Int'l. Beverage Dispensers & Bartenders, Local 280; Krumhole grievance*, October 29, 1985. Boscarol — 4 pages. (27)†

Probationary employee alleged to be insubordinate — not established; reinstatement with written warning; compensation reduced because of union delay in referring matter to arbitration. *Re Saville Food Products Inc. & U.F.C.W., Local 1105-P; Desmarchais grievance*, October 28, 1985. Brandt — 17 pages. (28)†

Procedure: absence of shop steward at disciplinary meeting — violation of mandatory provisions of collective agreement; termination of grievor null and void; reinstatement ordered. *Re Steinberg Inc. & U.F.C.W., Locals 175 and 633; Dias grievance*, November 5, 1985. Black — 17 pages. (29)†

Quit alleged — evidence showed that grievor realized he was agreeing to his termination; grievor's actions the true test of his intention; grievance dismissed. *Re B.A.S.F. Canada Inc. & C.P.U., Local 775; Locelle and Louzon grievances*, November 15, 1985. Majority: Adell, Alguire; dissent: Paxton — 28 pages. (30)

Refusal to return to work when certified by psychiatrist as fit to return to work — employer's treatment of grievor continuous and humane throughout illness; grievance dismissed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Sagar grievance*, November 8, 1985. Majority: Kates, Jarvis; dissent: McDonald — 19 pages. (31)

Selling of drugs while on duty alleged — company acted in haste without proper investigation and had only circumstantial evidence; grievance allowed. *Re Waverley Hotels & Hotel Employees, Restaurant Employees, Local 75; St. Amand grievance*, November 11, 1985. Aggarwal — 25 pages. (32)†

Smoking marijuana on premises and leaving job site — insufficient evidence of smoking marijuana; past record considered; reinstatement with written warning re leaving job site substituted. *Re Lake Ontario Steel Co. Ltd. & U.S.W.A., Local 6571; Azzopardi, Manchen grievance*. See (2), *supra*. (33)

Theft alleged — grievor deliberately devising method to pass security checks to remove company property; theft of sockets and attempted theft of pennies; serious misconduct and deterrence important having regard to nature of employer's business; grievance dismissed. *Re Royal Canadian Mint & Public Service Alliance of Canada; Albota grievance*, October 31, 1985. Majority: H.D. Brown, Saxe; dissent: McLean — 31 pages. (34)

Theft — criminal proceedings dismissed, but incident established; employment relationship not destroyed; reinstatement to a lower rank with partial compensation rights. *Re Canadian Pacific Hotels Ltd. & Hotel Employees, Restaurant Employees, Local 75; Cimbron grievance*, October 16, 1985. Wilson — 22 pages. (35)†

Unauthorized absences from assigned work area — poor work record; company's progressive discipline scheme applied inconsistently; 15-day suspension substituted. *Re Canada Post Corp. & C.U.P.W.; Meyer grievance*, October 25, 1985. P. Picher — 14 pages. (36)

Unauthorized removal of company property alleged — grievor a long service employee; employer failing to advise employees that breach of security would result in discharge; three-day suspension substituted. *Re North York General Hospital & S.E.I.U., Local 204; Ladha grievance*, November 11, 1985. Majority: Kates, Rundle; dissent: Ortlieb — 11 pages. (37)

Use of marijuana on job — grounds for dismissal where incident established. *Re National Auto Radiator Manufacturing Company Ltd. & U.A.W., Local 195; Semenski et al grievance*, November 7, 1985. Wilson — 8 pages. (38)†

Vandalizing of company property — frustration from planned lay-off insufficient provocation; discharge not unreasonable; grievance dismissed. *Re Canadian General Tower Ltd. & United Rubber Workers, Local 862; Cook grievance*, November 18, 1985. Lerner — 8 pages. (39)†

### Discipline

Alcohol — grievor disciplined for intending to consume a beer — rule specifying that beer must be consumed; grievance allowed. *Re Canadian Niagara Power Co. Ltd. & I.B.E.W., Local 1674; Keller grievance*, November 28, 1985. Barton — 8 pages. (40)†

Attendance on picket line of another company by grievor on his old company's time — work record excellent; grievance allowed in part. *Re W.J. Mowat Limited & E.C.W.U.; Haslett grievance*, October 24, 1985. Hearn — 14 pages. (41)†

Carelessness on the job — no mental element of wrong-doing attributed to the grievor; grievance allowed. *Re Brown Boveri Canada Inc. & C.U.O.E., Local 101; Testoni grievance*, November 19, 1985. Barrett — 9 pages. (42)†

Consumption of alcohol while on duty — grievors' work requiring operation of a dump truck without close supervision away from employer's premises; grievances dismissed. *Re Public Utilities Commission of the Borough of Scarborough & Utility Workers of Canada, Local 1; Allen and O'Meara grievances*, November 7, 1985. Majority: Howe, Gray; dissent: Bern — 13 pages. (43)

Idling at work, insubordination and driving forklift truck dangerously — serious misconduct; grievance dismissed. *Re Page-Hersey Works (Stelco Pipe and Tube Company) & U.E., Local 523; Melna grievance*, November 4, 1985. Barton — 9 pages. (44)†



Insubordination and use of abusive language — clearly proven; foreman within authority; written warning not unreasonable; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Bearder grievance*, November 13, 1985. Majority: Kennedy, Hines; dissent: Marshall — 8 pages. (45)

Insubordination — grievor leaving overtime shift early — length of shift, personal reasons and decision to leave being made in course of argument mitigate; three-day suspension reduced to written warning. *Re Canadian Vegetable Oil Processing, Division of Canada Packers Ltd. & U.F.C.W., Local 617P; Chisholm grievance*, November 14, 1985. Barton — 9 pages. (46)†

Insubordination: grievor refused to do work assigned believing it was not his function — violation of "work first and grieve later" principle; grievance dismissed. *Re Scarborough General Hospital & I.U.O.E., Local 796; Wilson grievance*, November 21, 1985. Houston — 8 pages. (47)†

Insubordination: company rule of disallowing motorcycles being driven to work — rule unreasonable and employer has no jurisdiction to control such employee conduct; grievance allowed. *Re Coburg & District Ambulance Service & O.P.S.E.U., Local 344; Brown grievance*, November 15, 1985. Solomatenko — 15 pages. (48)\*†

Picket-line violence — damage to cars owned by non-striking employees — damage not as severe as originally suspected; sixty-day suspension reduced to thirty days. *Re Cyanamid Canada Inc. & U.E., Local 536; Willick et al grievances*, November 19, 1985. Davis — 24 pages. (49)†

Picket-line violence — grievor blocked company truck convoy; ninety-day suspension reduced to twenty-one days because of grievor's past record and sincerity. *Re Cyanamid Canada Inc. & U.E., Local 536; Willick et al grievances*. See (49), *supra*. (50)†

Picket-line violence — grievors threw rocks and a beer bottle at company trucks, smashing windshields; thirty-day suspensions; grievances dismissed. *Re Cyanamid Canada Inc. & U.E., Local 536; Willick et al grievances*. See (49), (50), *supra*. (51)

### Employment Status

Award incorporating terms of settlement — grievor recognized as full-time, non-probationary teaching master. *Re Algonquin College & O.P.S.E.U.; Roberts grievance*, November 14, 1985. Brent — 3 pages. (52)

Casual employee: entitlement to benefits — according to provisions of collective agreement parties did not intend to provide benefits; grievance dismissed. *Re Northern Credit Union Ltd. & O.P.E.I.U., Local 26; union grievance*, November 18, 1985. Aggarwal — 25 pages. (53)†

Casual employee — grievor working a total of 81 days, but not three continuous months; seniority status not acquired; grievance dismissed. *Re East Parry Sound Board of Education & C.U.P.E., Local 1165; Dobson grievance*, November 20, 1985. Majority: Dunn, Anissimoff; dissent: Gower — 5 pages. (54)

Loss of seniority and recall rights while on sick leave — employment status not lost, and entitled to be advised by company of all job vacancies which may occur; grievance allowed in part. *Re B.A.S.F. Canada Inc. & C.P.U., Local 775; Lacelle and Lauzon grievances*. See (30), *supra*. (55)

Loss of seniority: grievor off work due to long-term disability for a period over nine months loses seniority and benefits — can only return to work as a new employee; grievance dismissed. *Re Co-operative Regionale de Nipissing Sudbury Ltd. & R.W.D.S.U., Local 545; Giroux grievance*, November 18, 1985. Duchesneau-McLachlan — 5 pages. (56)†

### Estoppel

Wages for casual part-time nurses — brief payment as regular part-time not establishing detrimental reliance; grievance dismissed. *Re Ross Memorial Hospital & O.N.A., Local 127; group grievance*, November 7, 1985. Majority: Dunn, Winkler; dissent: Symes — 11 pages. (57)\*

Wash-up period changed to five minutes from fifteen minutes before end of shift — practice not in any way inconsistent with collective agreement; employer not precluded from altering practice; grievance dismissed. *Re Brewers' Warehousing Co. Ltd. & Brewery Workers; policy grievance*, November 20, 1985. Brunner — 19 pages. (58)\*†

Representation by employer alleged — representation qualified; no estoppel; grievance dismissed. *Re Southam-Murray & Toronto Typographical Union, Local 91; Schauer grievance*, November 8, 1985. Foisy — 8 pages. (59)†

### Grievance Procedure

Timeliness: extension of time limits — where the employees have slept on their rights re vacation pay entitlement, for periods in excess of one or two years there can be no justification for extending time limits; grievance dismissed. *Re Cryovac Division, W.R. Grace Co. of Canada Ltd. & C.U.O.E., Local 101; group grievance*, November 15, 1985. O'Shea — 15 pages. (60)†

Timeliness: referral to arbitration — no substantial prejudice to company; change in union executive leading to inadvertent error of late referral; not negligence nor deliberate disregard of time limits; grievance arbitrable. *Re Dominion Colour Co. Ltd. & Teamsters, Local 1880; Clarke grievance*, October 31, 1985. Majority: H.D. Brown, Heard; dissent: Phillips — 45 pages. (61)

### Holidays

Lieu days — employer may treat lieu day as forfeited if not able to arrange a mutually agreeable date within a reasonable time after the holiday; direction to grant lieu day within sixty days of award; grievance allowed in part. *Re Golden Manor Home For The Aged (City of Timmins) & C.U.P.E., Local 1140; Madden grievance*, November 5, 1985. Dunn — 4 pages. (62)

### Holiday Pay

Entitlement of probationary employees — no restriction in collective agreement so as to exclude probationary employees from entitlement to holiday pay; grievance allowed. *Re Witco Chemical Canada Limited & U.F.C.W., Local 1000A; group grievance*, October 23, 1985. H.D. Brown — 11 pages. (63)

### Illness

Return to work: unnecessary delay in recall alleged — company seeking and receiving more detailed medical certificate; grievor entitled to return to work upon receipt of certificates; grievance allowed. *Re Dempster's Bread, Division of Corporate Foods Limited & Milk and Bread Drivers, Local 647; Mykolyk grievance*, November 8, 1985. Dissanayake — 14 pages. (64)

### Indemnification

Legal costs: off-duty police officer personally involved in altercation — arrested complainant charges with assault; police officer acquitted; arrest found made in good faith and as a police officer; indemnification granted. *Re Metropolitan Toronto Board of Commissioners of Police & Metropolitan Toronto Police Association; Denning grievance*, November 13, 1985. P. Picher — 46 pages. (65)

**Job Evaluation**

Job in question had been properly evaluated — grievance dismissed. *Re Camco Inc. & U.E., Local 550; Bonano grievance*, November 22, 1985. Joyce — 18 pages. (66)†

New position of National Grievance Officer — assessment of position on factors of “decision-making”, “managerial responsibility” and “knowledge” place job at higher pay level than accorded by employer; grievance allowed. *Re The Union of Postal-Communications Employees & The Alliance Employees’ Union; union grievance*, November 1, 1985. Kates — 16 pages. (67)

Rate for new job — evidence showed that wage rate to be used is that proposed by the company; grievance dismissed. *Re Beardmore & U.F.C.W., Local 0479P; union grievance*, November 21, 1985. Majority: Brent, Williamson; dissent: Reilly — 9 pages. (68)

Rating scheme — grievor’s desire to be re-rated according to job evaluation scheme; jobs in question were properly rated by job evaluation committee; grievance dismissed. *Re Toronto, Corp. of City of & C.U.P.E., Local 43; union grievance*, November 22, 1985. Majority: E.B. Jolliffe, Milks; dissent: Tate — 143 pages. (69)

Upward classification adjustments requested — average of maximum rates of each employer to be used; retroactivity to wait until later stage of arbitration. *Re Metropolitan Toronto, Municipality of and Metropolitan Licensing Commission & C.U.P.E., Local 79; union grievance*, November 11, 1985. Majority: Kennedy, Warrian; dissent: Belford — 29 pages. (70)

**Job Posting**

Merger of two units into one — resulting position of unit coordinator is a new position and therefore must be posted; grievance allowed. *Re Hawkesbury and District General Hospital & O.N.A., Local 193; policy grievance*, November 13, 1985. Carrothers — 19 pages. (71)†

Particulars — collective agreement requiring preciseness; arbitral deference shown to previous decision re actual hours of vacant position; grievance allowed. *Re Toronto Transit Commission & A.T.U., Local 113; policy grievance*, November 8, 1985. Majority: Saltman, Herbert; dissent: Ronson — 21 pages. (72)\*

Posted qualifications — agreement by the parties of issue in question; decision not required. *Re Metropolitan Toronto Zoo & C.U.P.E., Local 1600; policy grievance*, November 15, 1985. E.B. Jolliffe — 5 pages. (73)†

Qualifications — grievor not proving ability to do the job; grievance dismissed. *Re Sealed Air of Canada Ltd. & U.S.W.A., Local 9042; Dumlao grievance*, November 19, 1985. Hearn — 15 pages. (74)†

**Lay-Off**

Equipment breakdown resulting in the cancellation of one shift of work constituting a lay-off — grievor capable of performing unskilled work available; grievance allowed. *Re E.B. Eddy Forest Product Ltd., Wood Products Division & Canadian Paperworkers, Local 31; Cyr grievance*, October 31, 1985. Majority: Brent, Paxton; dissent: Anissimoff — 26 pages. (75)

Qualifications — grievor lacking qualifications to perform all the work of the job classification in the department sought; grievances dismissed. *Re Gulf Canada Products Co., Clarkson Refinery & E.C.W.U., Local 593; Lawrence and McEwan grievances*, October 31, 1985. Kennedy — 11 pages. (76)

Qualifications — grievor unable to adequately perform the work on previous occasion; grievor failing to increase his skill related to the job he is claiming; grievance dismissed. *Re The Canada Metal Company Limited (Toronto Plant) & E.C.W.U., Local 2; Smith grievance*, November 7, 1985. Black — 7 pages. (77)

Super-seniority — company cannot lay off a senior steward before other bargaining unit employees even if a probationary employee; grievance allowed. *Re Shaw Pipe Protection Ltd. & I.U.O.E., Local 772; Reid grievance*, November 22, 1985. Betcherman — 5 pages. (78)†

**Overtime**

Assignment — work not given top priority assignment until after regular shift; company did not act in bad faith in denying work to grievors on regular shift; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; group grievance*, November 15, 1985. Joyce — 9 pages. (79)†

Distribution: availability list — no evidence of inequitable distribution; grievance dismissed. *Re North Bay, Corp. of City of & C.U.P.E., Local 122; Labrush grievance*, November 20, 1985. Majority: Dunn, Saunders; dissent: Gower — 7 pages. (80)

Entitlement — assignment of a run known to require two days’ work including overtime to junior employee breached requirement that overtime be assigned by seniority; grievance allowed. *Re Quaker State Inc. & Teamsters, Local 879; Barr grievance*, November 5, 1985. Hearn — 7 pages. (81)†

Entitlement: supervisor working overtime shift — employer admits incorrect procedure; filing of grievance a bar to claim that grievor not the entitled employee; grievance allowed and compensation for lost shift awarded. *Re Chromasco Ltd. & U.S.W.A., Local 4632; Yantha grievance*, November 15, 1985. Pyle — 13 pages. (82)†

Qualifications — work given to more junior employee because of his particular training for the job; grievor had the qualifications, but just lacked a simple “familiarization”; seniority determining factor; grievance allowed. *Re Timmins, Corp. of City of & C.U.P.E., Local 210; Gagne grievance*, November 27, 1985. Wilson — 8 pages. (83)†

Shutdown and rescheduling of work — employees working outside regularly scheduled hours of work not entitled to overtime, contracting out violation of collective agreement and company employees to be compensated; employees working on a statutory holiday were regularly scheduled and therefore not entitled to overtime. *Re Dow Chemical Canada Inc. & E.C.W.U., Local 672; union grievance*, November 1, 1985. Majority: Verity, Billings; dissent: Robbins — 22 pages. (84)

**Pensions**

Company failed to pay pension increases to employees who had retired before certain date — collective agreement provides basis for company’s action; grievance dismissed. *Re Spar Aerospace Ltd. & U.A.W., Local 112; policy grievance*, November 22, 1985. Solomatenko — 13 pages. (85)†

**Premium Pay**

Entitlement — procedure of listing work available and signing the nurse’s name beside the shift is a request by the hospital instead of a request by the nurse; premium pay ordered; grievance allowed. *Re Community Memorial Hospital & O.N.A.; Brown grievance*, November 18, 1985. Kirkwood — 7 pages. (86)†



Entitlement to shift premium — plain words of collective agreement do not entitle grievor to double time rate for work following additional hours worked on a holiday; grievance dismissed. *Re Sudbury General Hospital & O.N.A.; Poirier grievance*, November 14, 1985. Boscariol — 5 pages. (87)†

### Probationary Employee

Calculation of probationary period — based on calendar months of employment; probationary period completed. *Re Canadian Broadcasting Corp. & C.U.P.E.; Pagé grievance*, October 23, 1985. M. Picher — 15 pages. (88)\*

### Procedure

Hearing date fixed by arbitrator — delay of a discharge case by more than one year approaching abuse of process. *Re Metropolitan General Hospital & O.N.A.; Fizzell grievance*, November 19, 1985. E.B. Jolliffe — 7 pages. (89)

### Promotion

Competitive promotion clause — no evidence grievor not given fair consideration even though not interviewed; employer's choice not unreasonable; grievance dismissed. *Re The Lincoln County Roman Catholic Separate Schools & C.U.P.E., Local 911; Stangl grievance*, November 14, 1985. Houston — 12 pages. (90)†

Corporation slow to establish and fill new positions — corporation agreed to implement selection process subject to restrictions outlined by arbitrator. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; N-145 grievance*, October 9, 1985. M. Picher — 8 pages. (91)

Grievor seeking assignment to particular unit once being informed of success in job posting for position — employer entitled to assign to different unit; dismissed grievance. *Re Owen Sound General and Marine Hospital & O.N.A.; Hood grievance*, November 1, 1985. Boscariol — 7 pages. (92)†

Qualifications — allegation that grievor unsafe worker not crucial to job; grievance allowed. *Re G.S.W. Inc. & U.S.W.A., Local 3789; Hanna grievance*, November 11, 1985. Barton — 5 pages. (93)†

Qualifications — correct assessment of candidates on relevant criteria made fairly and adequately; competition clause — grievor lacking in relevant experience; grievance dismissed. *Re Boston Insulated Wire and Cable Co. Limited & U.E., Local 520; Birrell grievance*, November 1, 1985. Majority: Weatherill, Little; dissent: Davidson — 11 pages. (94)

Qualifications — grievor lacking in relevant qualifications; onus on grievor to establish prima facie case of equality to incumbent before evidentiary onus shifts to employer to justify selection; grievance dismissed. *Re Dufferin-Peel Roman Catholic Separate School Board & C.U.P.E., Local 1483; Haist grievance*, November 1, 1985. Majority: Kennedy, Riddel; dissent: McDonald — 13 pages. (95)\*

Selection process: employer chose a procedure which set up a competition between applicants — relevant criterion is whether most senior man equal to job; grievance allowed. *Re Stormont, Dundas and Glengarry County Board of Education & C.U.P.E., Local 782; Rutherford grievances*, November 8, 1985. Emrich — 20 pages. (96)†

Trial period of specific length — employer not allowed to truncate grievor's trial period to shorter length of time even if work performance is unsatisfactory; grievance allowed. *Re York University & C.U.P.E., Local 1356; Tanel grievance*, November 6, 1985. Betcherman — 7 pages. (97)†

### Recall

Entitlement — grievor lost his seniority rights after eighteen months of lay-off according to collective agreement; new employee hired and grievor not recalled; grievor not entitled to recall rights; grievance dismissed. *Re Premier Group & Teamsters, Local 880; Nikita grievance*, November 25, 1985. Barton — 15 pages. (98)†

Indefinite lay-off — grievors not working for company for at least one year — laid-off employees without seniority do not retain recall rights; grievors not discharged; company not obliged to create jobs before year is up; company not obliged to alter grievors' employment before hiring outside; grievance dismissed. *Re F.B.M. Distillery Co. Ltd. & United Brewery Workers, Local 304; group grievance*, October 25, 1985. P. Picher — 24 pages. (99)\*

Job offered to laid-off grievor shortly after loss of seniority rights — no bad faith found in delay; grievor could have avoided by taking a lower position; grievance dismissed. *Re Infasco Nut Co. & U.S.W.A., Local 9015; Ruess grievance*, November 11, 1985. Barrett — 10 pages. (100)†

Physical fitness: conflicting doctors' reports — report of doctor who is familiar with grievor's condition and company's work accepted — grievor having right to recall as of date of doctor's report; grievance allowed in part. *Re Franklin Manufacturing, a Division of W.C.I. Manufacturing Ltd. & I.A.M., Local 1246; Cabral grievance*, November 18, 1985. Majority: Brent, Solberg; dissent: Burnet — 21 pages. (101)

### Scheduling of Work

Grievor scheduled to work his regular day off in absence of emergency, epidemic or sickness — no requirement to work in such circumstances; grievor not agreeing to work his regular day off; grievance allowed. *Re Lucerne Food Limited, Division of Oshawa Group Limited & Milk and Bread Drivers, Local 647; Mason grievance*, October 30, 1985. Adamson — 7 pages. (102)†

Notice requirement — management not giving sufficient notice even though having knowledge of exact scheduling needs; grievance allowed. *Re Victoria Hospital Corp. & London and District Service Workers, Local 220; group grievance*, November 12, 1985. Majority: Devlin, McDonald; dissent: Stewart — 13 pages. (103)

Employer entitled to schedule starting and stopping times of work which fall within the daily hours stipulated in collective agreement; grievance dismissed. *Re Toronto, Corporation of the City of & C.U.P.E., Local 79; policy grievance*, November 1, 1985. Simmons — 12 pages. (104)

Weekends off — employees entitled to one weekend off in three-week period; grievor to receive extra weekend off within six weeks of award to compensate for working five straight weekends. *Re Oaklands Regional Centre & O.P.S.E.U.; Davies grievance*, November 8, 1985. Majority: Kruger, Herbert; dissent: Sargeant — 6 pages. (105)

### Sick Leave

Part-time employee injured while working for another employer — collective agreement ambiguous; negotiating history unhelpful; prima facie entitlement not disproved; grievance allowed. *Re Toronto Star Newspapers Ltd. & The Southern Ontario Newspaper Guild, Local 87; Tilley grievance*, November 5, 1985. Samuels — 8 pages. (106)

**Transfer**

Movement within job classification — employer having right to effect changed work assignments within a job classification without regard to seniority considerations; grievance dismissed. *Re Labatt's Ontario Breweries & Brewery Workers, Local 304; McLernon grievance*, November 13, 1985. Brandt — 10 pages. (107)

**Union Security**

Failure to collect and remit dues to union — terms of settlement incorporated in award. *Re 121571 Canada Incorporated & Ontario Taxi Association, Local 1688; union grievance*, October 28, 1985. Pyle — 5 pages. (108)†

**Vacations**

Change in status from full-time to part-time interrupts continuous service for the purpose of calculating vacation entitlement — on reacquisition of full-time status, grievor to be treated as new employee; grievance dismissed. *Re Golden Manor Home For The Aged (City of Timmins) & C.U.P.E., Local 1140; Boudreau grievance*, November 5, 1985. Dunn — 9 pages. (109)

Entitlement to five weeks' vacation vests upon completion of twelve years of service; grievances allowed. *Re Peterborough County — City Health Unit & O.N.A.; individual and policy grievances*, October 31, 1985. Draper — 7 pages. (110)†

**Vacation Pay**

Accrual of vacation pay during strike — employer alleged that union acquiesced to employer position; must be cogent and convincing evidence of conduct for estoppel; grievance allowed. *Re Belleville Transit Commission & Canadian Brotherhood of Railway, Transport and General Workers, Local 126; O'Doherty and Brinklow grievances*, May 24, 1985. England — 27 pages. (111)†

Calculation — full vacation pay and pay an employee earns through work during a vacation period to be included in following year's calculation; grievance allowed. *Re Schrader Automotive Products, Division of Scovill Industries Limited & I.A.M., Local 1701; union grievance*, April 29, 1985. Schiff, Saxe, Robbins — 5 pages. (112)

Calculation — including previous year's vacation pay; estoppel not applicable; grievance allowed. *Re Motor Wheel Corporation of Canada Ltd. & U.A.W., Local 127; policy grievance*, July 11, 1984. Palmer — 6 pages. (113)

Release from employment because of shut-down — not a discharge; entitled to vacation pay. *Re Newman Steel Ltd. & U.S.W.A., Local 6019; Vandongin grievance*, December 19, 1984. Palmer — 7 pages. (114)

Calculation — indefinitely laid off employees; need for clear granting of continuation of "employee" rights not found here; grievance dismissed. *Re Alcan Foil Products & U.S.W.A., Local 8754; policy grievance*, September 12, 1985. Joyce — 10 pages. (115)†

**Wages**

Calculation — previous experience not properly taken into account; failure to protest immediately not a bar; grievance allowed. *Re St. Thomas-Elgin General Hospital & O.N.A.; Bergman grievance*, August 26, 1985. Teplitsky, Winkler, Switzman — 3 pages. (116)

Recovery of overpayment of H.O.O.D.I.P. premium — method of recovery by set-off against wages currently payable contrary to s.8 of the *Employment Standards Act* and s.15 of the regulations thereunder; interim award. *Re St. Joseph's Hospital, London & London and District Service Workers, Local 220; group and policy grievance*, September 23, 1985. Majority: Kates, McDonald; dissent: Mustard — 28 pages. (117)\*

Related experience allowance — "shall" to be interpreted as mandatory rather than directory; grievor entitled to related experience allowance; grievance allowed. *Re Hamilton, Board of Education for the City of & A.E.F.O., Hamilton School Unit; Lamoureux grievance*, August 30, 1985. Majority: Marcotte, Mangan; dissent: MacDermid — 29 pages. (118)

Starting salary for new hire: credit for previous experience — employer having right to assess hiree's past experience, but not having right to nullify experience in an arbitrary and discriminatory fashion; grievance allowed. *Re The Queensway-Carleton Hospital & Assoc. of Allied Health Professionals, Ontario; Slivinski and Vines grievance*, November 9, 1985. Kates, Moss, Stansel — 10 pages. (119)

Starting salary — prior experience as a nurse was recent and related; starting salary should have reflected that fact; grievance allowed. *Re Altamont Nursing Home & O.N.A.; Moran grievance*, October 3, 1985. Majority: Swinton, O'Neil; dissent: Baker — 18 pages. (120)

Commission sales made as a result of company promotion — does not derogate from salesman's commission as a result of sale; collective agreement considered; grievance allowed. *Re Northern Breweries Ltd. & Brewery Workers, Local 304; Price grievance*, November 18, 1985. Duchesneau-McLachlan — 5 pages. (121)

Temporary assignment — advantageous wage differential not carried over; grievance dismissed. *Re New Dominion Stores Inc. & U.S.W.A., Local 14045; Vandenberghe grievance*, November 7, 1985. H.D. Brown — 7 pages. (122)†

**Welfare Plans**

Weekly accident and sickness benefit plan — calculation of waiting period for commencement of benefits for non-hospitalized illness not to include Saturday or Sunday; grievance dismissed. *Re McDonnell Douglas of Canada Ltd. & U.A.W., Local 673; policy grievance*, August 28, 1985. Burkett — 18 pages. (123)

Entitlement to fringe benefits of inactive employees — employer claiming ineligibility for L.T.D. means ineligibility for entire fringe benefit package — grievors entitled to continued payment of O.H.I.P. premiums only; grievance allowed in part. *Re Benson and Hedges & Bakery, Confectionery and Tobacco Workers, Local 325-T; Boyd and Beg grievance*, November 7, 1985. MacDowell — 27 pages. (124)\*

Life insurance entitlement where long-term disability — entitled to level of coverage as at date of death rather than as at date of active employment; grievance allowed. *Re Sommerville Belkin Industries Limited & E.C.W.U., Local 30; Brown grievance*, November 4, 1985. Majority: Hinnegan, Isber; dissent: Churchill-Smith — 19 pages. (125)\*

**Work Assignment**

Assessment of grievor's proficiency — onus shifting to employer; grievance allowed, compensation ordered for lost time. *Re Wardair Canada Inc. & C.A.L.F.A.; Huchette grievance*, September 9, 1985. Kennedy — 17 pages. (126)



Employer's right to reassign job duties — duty in question incidental to primary function; management right affirmed; grievance dismissed. *Re Canada Cement Lafarge & United Cement, Lime and Gypsum Workers, Local 368; union grievance*, August 28, 1985. Majority: Burkett, Correll; dissent: Solberg — 18 pages. (127)

Full-time position replaced by two part-time positions — full-time position no longer in existence; grievance dismissed. *Re Metropolitan Toronto Family Service Association & O.P.S.E.U., Local 594; Low grievance*, September 3, 1985. Majority: Swan, Ubels; dissent: Herbert — 12 pages. (128)

Non-bargaining unit employee doing work of bargaining unit employee — violation of collective agreement; company to discontinue assignment of such work. *Re Nestle & S.E.U., Local 183; policy grievance*, August 28, 1985. Devlin — 18 pages. (129)

Reorganization causing elimination of grievor's former job and re-assignment of job duties to a different classification — not unfair or unreasonable; reorganization for valid business reasons; no guarantee of continuation of a particular classification; grievance dismissed. *Re Algoma Steel Corporation Limited & U.S.W.A., Local 2251; Causley grievance*, August 28, 1985. Majority: Davis, Forbes; dissent: Woodcock — 9 pages. (130)

Use of temporary employees — no need to be hired for specific employee absent as temporaries allowed "for other purposes"; grievance dismissed. *Re Union Gas Limited & E.C.W.U., Local 938; policy grievance*, September 24, 1985. Majority: Brent, Storie; dissent: Nelson — 12 pages. (131)

Assignment of cashier duties to bartenders — not contracting out; duties overlapping bartenders and cashiers; grievance dismissed. *Re The Ontario Jockey Club & Hotel Employees Restaurant Employees, Local 75; policy grievance*, November 5, 1985. Hearn — 10 pages. (132)†

Bar manager assigned bargaining unit work in excess of twenty-four hours per week — settled by withdrawal of one grievance; payment of lump sum in satisfaction of other grievance; incorporated in award; grievances settled. *Re Waverley Hotels (510412 Ontario Limited) & Hotel Employees Restaurant Employees, Local 75; policy grievances*; October 30, 1985. Aggarwal — 5 pages. (133)†

Employees with less seniority working on the day shift while employees with greater seniority working on afternoon shift — decision made on purely practical business reasons; grievance dismissed. *Re Jaeger Canada Equipment Ltd. & I.A.M., Local 2729; policy grievance*, November 21, 1985. Barton — 8 pages. (134)†

Inequitable workload alleged — preparation of software for course required more than twice the usual time because of repeated changes in hardware; when considered with balance of workload and compared to workload of others comparably situated, workload inequitable; grievance allowed. *Re Centennial College & O.P.S.E.U.; Galemba grievance*, October 31, 1985. Majority: Burkett, Beaulieu; dissent: Koski — 23 pages. (135)

Performance of bargaining unit work by management — work not "ordinarily and usually" performed by the grievor; grievance dismissed. *Re Wyeth Ltd. & E.C.W.U., Local 368; Sharma grievance*, November 21, 1985. Black — 9 pages. (136)†

Usurpation of bargaining unit work alleged — handling of parking practices not a normal security and policing function; grievance dismissed. *Re Carleton University & Canadian Guards Assoc., Local 103; union grievance*, November 11, 1985. Pyle — 13 pages. (137)†

### Working Conditions

Secondary smoke — allegation that company has failed to provide mutually satisfactory working conditions due to secondary smoke — not a breach of the collective agreement; grievance dismissed. *Re De Havilland Aircraft of Canada & U.A.W., Local 673; Torrance grievance*, November 12, 1985. Barton — 7 pages. (138)†

# Monthly Bulletin



Ontario Ministry of Labour



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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of December, 1985. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Discharge of probationary employee — probationary employee not having the right to challenge his termination; grievance not arbitrable. *Re Algonquin College of Applied Arts and Technology & O.P.S.E.U.; Hobbs grievance*, November 21, 1985. Majority: H.D. Brown, O'Connor; dissent: Hunter — 22 pages. (1)

Issue estoppel — parties and issue before board of arbitration not identical to those on prior unilateral reference to Inflation Restraint Board; issue estoppel not applicable. *Re Hamilton, Board of Education for the City of & Ontario Public Teachers' Federation; Sephton grievance*, December 3, 1985. Saltman, Hassell, Koskie — 15 pages. (2)

Settlement alleged — withdrawal of issue from bargaining does not preclude arbitration; s. 33 of *Police Act* operates to allow arbitration notwithstanding that matter not expressly covered by collective agreement; grievance arbitrable. *Re Metropolitan Toronto Board of Commissioners of*



*Police & Metropolitan Toronto Police Association; policy grievance*, December 11, 1985. Burkett — 31 pages. (3)

Temporary employee grieving about promotion — board not having jurisdiction to assess grievor's qualifications; grievance not arbitrable. *Re Hurst, Corporation of the Town of & C.U.P.E., Local 1536; Boisvert grievance*, November 28, 1985. Majority: Dunn, Rukovina; dissent: Turcotte — 18 pages. (4)

Withdrawal of grievance pursuant to terms of earlier settlement alleged — not established; grievance arbitrable; interim award. *Re Fanshawe College & O.P.S.E.U.; Gurafsky grievance*, December 5, 1985. Brent, Hoddle, Herbert — 9 pages. (5)

### Bargaining Unit

Home workers — employee relationship continues to exist; collective agreement covers; no ambiguity; grievance allowed. *Re Guelph Elastic Hosiery Co. Ltd. & United Garment Workers, Local 508; policy grievance*, December 9, 1985. T.A. Jolliffe — 31 pages. (6)†

Manufacturing Engineer — managerial functions and authority properly excluded; grievance dismissed. *Re Fleet Industries, a Division of Fleet Aerospace Corporation & I.A.M., Lodge 939; union grievance*, December 10, 1985. Kennedy — 11 pages. (7)

Non-teacher hired for bargaining unit position — agreement not requiring position to be held by a teacher; employer not obligated to preserve "past practice"; grievance dismissed. *Re Hamilton, Board of Education for the City of & Hamilton Teachers' Federation; union grievance*, November 28, 1985. Majority: Weatherill, MacDermid; dissent: Koskie — 14 pages. (8)

### Board of Arbitration

Jurisdiction — grievor failed to meet conditions set out in Board's earlier award and was subsequently discharged; Board is not "functus officio" and has jurisdiction respecting the grievor's employment status. *Re Victoria Hospital Corporation & London and District Service Workers, Local 220; Brill grievance*, November 25, 1985. M. Picher, McDonald, MacLeod — 7 pages. (9)\*

### Classification

New machine introduced and given lower classification — held to be similar to work on other machines and deserving of higher classification; grievance allowed. *Re Winchester Cheese Inc. & R.W.D.S.U., Local 440; Roughton grievance*, November 22, 1985. Majority: Thorne, Currie; dissent: Furlong — 15 pages. (10)

Student labourers claim higher classification based on duties — job description considered; transporting of machine by trailer not operation of it as attachment; grievance dismissed. *Re Niagara, Regional Municipality of & C.U.P.E., Local 1287; policy grievance*, undated, Davis — 8 pages. (11)†

### Collective Agreement

Existence of collective agreement — memorandum ratified by union but no formal execution; agreement found to exist by conduct of parties; grievance arbitrable. *Re Lepages Ltd. & E.C.W.U., Local 819; policy grievance*, December 10, 1985. Palmer — 5 pages. (12)

Letter of understanding — company's intentions not misrepresented in negotiations with union by a letter of understanding; letter provides for a merger; union demand that employees be transferred back and compensation denied; grievance dismissed. *Re Network Transport & Teamsters, Local 938; union grievance*, December 20, 1985. Majority: Burkett, Cowan; dissent: Petryshen — 19 pages. (13)

### Contracting Out

Part of work contracted out was work which was customarily performed in the plant by plant employees — work was best performed during regular working hours; compensation to be calculated at regular wage rates. *Re Computing Devices Canada (a Division of Control Data Canada Limited) & Employees' Association, Computing Devices Company; Carmichael, Blais, Brooks grievance*, October 28, 1985. Abbott, Green, Robbins — 13 pages. (14)

Part-time security function contracted out — held to be allowable under agreement despite prior practice if based on economic feasibility; grievance dismissed. *Re Maple Leaf Mills Ltd. (Baden) & E.C.W.U., Local 53; policy grievance*, May 3, 1985. Palmer — 8 pages. (15)

### Damages

Assessment — compensation for two days' work per week during period when substitutes would be hired to be paid in trust together with dues and pension plan contributions proportionately; supplementary award. *Re The Daily Times & Toronto Typographical Union, Local 91; policy grievance*, December 10, 1985. Majority: Saltman, Buhler; dissent: Farrell — 15 pages. (16)

Implementation of original award — grievor entitled to receive the full monies he would have earned had he been assigned to the work to which he was entitled. *Re Falconbridge Limited & Sudbury Mine, Mill and Smelter Workers, Local 598; Smith grievance*, December 18, 1985. Majority: Knopf, McIntyre; dissent: Valin — 12 pages. (17)

Quantum — employer found liable in previous award; amount specified; interest awarded only if employer fails to pay amount awarded after a reasonable time. *Re 121571 Canada Inc. & R.W.D.S.U., Local 1688; policy grievance*, December 23, 1985. Fraser — 3 pages. (18)†

Reinstatement of discharged employee — compensation at material handler's rate of pay and benefits until date of reinstatement; supplementary award. *Re MultiFittings, Division of Redpath Industries Ltd. & Int'l. Molders and Allied Workers, Local 49; MacLauchlan grievance*, December 9, 1985. Kates — 7 pages. (19)

### Demotion

Disciplinary demotion — rude and argumentative attitude adversely affecting customer relations; history of similar conduct; lack of remorse; seven-month demotion reduced to three months; grievance allowed in part. *Re Toronto Hydro Electric System & C.U.P.E., Local 1; Ulman grievance*, November 29, 1985. O'Shea — 18 pages. (20)

Unsatisfactory work performance — grievor did not meet the proper performance criteria for his job; employer justified in demoting grievor; grievance dismissed. *Re Atomic Energy of Canada Ltd. & P.S.A.C., Local 70367; Bulloch grievance*, December 23, 1985. Majority: Weatherill, Healy; dissent: McLean — 13 pages. (21)

### Discharge

Aberrant behaviour — grievor had a history of emotional outbursts and a violent temper; punched out a window; company cannot live with this explosiveness; grievance dismissed. *Re Alcan Canada Products Ltd., Kingston Works & U.S.W.A., Local 343; Johnson grievance*, December 13, 1985. Pyle — 20 pages. (22)

Absence due to incarceration — employer refusal to participate in TAP program within its rights; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works & U.S.W.A., Local 1005; Andrews grievance*, December 20, 1985. McLaren, Storie, Marshall — 16 pages. (23)\*

Absence from work — loss of seniority; Workers' Compensation Board had advised both the company and the grievor that the grievor was fit for work; subsequent prolonged absence of grievor; grievance dismissed. *Re Mason Windows Ltd. & Labourers, Local 183; Pacheco grievance*, December 24, 1985. Black — 6 pages. (24)†

Absent during shift to go fishing — fellow employee only suspended for same incident; grievance allowed; reinstatement without compensation. *Re Redlaw Industries Ltd. & U.S.W.A., Local 4657; Leppard grievance*, November 29, 1985. Brunner — 8 pages. (25)

Absenteeism as a result of being disabled — employer unable to make contact with grievor; discharge too harsh because of disability; reinstatement with provision of medical certificate. *Re Hamilton Civic Hospitals & O.N.A.; Charles grievance*, November 1, 1985. Majority: McKechnie, McIntyre; dissent: Paulin — 24 pages. (26)

Absenteeism due to accident injury — no indication that grievor would not be able to return to work; discharge premature; grievance allowed pending further medical exam. *Re North Park Nursing Home & Health, Office and Professional Employees, Local 206; Gordon grievance*, November 22, 1985. R.J. Roberts, Rudrum, Graham — 13 pages. (27)

Absenteeism due to illness and WCB claims — no evidence that absenteeism likely to continue; grievance allowed; reinstatement with compensation. *Re N.E.T.P. Ltd. & U.A.W., Local 199; Barriage grievance*, November 18, 1985. Weatherill — 9 pages. (28)

Absenteeism — grievor's continuing illness established on evidence; failure of grievor to respond to registered letters from company justified in circumstances; grievance allowed. *Re Varta Batteries Limited & U.A.W., Local 124; Freire grievance*, December 4, 1985. O'Shea — 21 pages. (29)

Absenteeism — grievor suffering from serious back ailment; missing twenty-seven of last forty-two months of employment; at time of discharge real prognosis for grievor not known; order that grievor obtain a medical opinion stating whether he is capable of regular attendance in future. *Re Courtice Steel Ltd. & U.S.W.A., Local 8635; Lesnick grievance*, November 20, 1985. Thorne — 18 pages. (30)†

Absenteeism — innocent but excessive; no evidence of likelihood of improvement; discharge not unreasonable; grievance dismissed. *Re Westinghouse Canada Inc. & U.E., Local 504; Dendekker grievance*, December 13, 1985. Joyce — 8 pages. (31)†

Alcoholism alleged — grievor less than honest with employer; grievor's rehabilitation not likely; grievor a potential hazard in workplace; grievance dismissed. *Re Imperial Roadways Ltd. & Teamsters, Local 938; Prosser grievance*, November 22, 1985. Majority: M. Picher, Cowan; dissent: McRae — 12 pages. (32)

Allergy to dust at worksite — grievor unable to work; poor prospects for future ability; no obligation to place in alternate job classification or change work environment; grievance dismissed. *Re Nabisco Brands Ltd. & International Brotherhood of Firemen and Oilers, Local 101; MacKenzie grievance*, December 11, 1985. Gandz — 9 pages. (33)†

Assault on patient — some provocation by patient; all circumstances should be considered; reinstatement with no compensation. *Re Riverdale Hospital & C.U.P.E., Local 79; Greaves grievance*, December 19, 1985. Majority: Rayner, Taylor; dissent: Ronson — 12 pages. (34)\*

Assault on supervisor — long, unblemished record of grievor taken into account; grievance allowed; conditional reinstatement with apology and no compensation. *Re Union Gas Co. & E.C.W.U., Local 764; Carere grievance*, December 19, 1985. Majority: Brent, Rogers; dissent: Koskie — 17 pages. (35)

Breach of conditional reinstatement — discharge originally due to chronic absenteeism; grievor not proving himself capable of attending work on a regular basis; grievance dismissed. *Re Denison Mines Limited & U.S.W.A., Local 5762; Ryan grievance*, December 23, 1985. Freedman — 7 pages. (36)

Conditional reinstatement — employer acted fairly in light of conditions, discharge upheld; grievance dismissed. *Re Thibodeau-Finch Express Ltd. & Teamsters, Local 938; Fraser grievance*, December 9, 1985. Majority: Rayner, Tayles; dissent: Petryshen — 9 pages. (37)

Criminal charges — alleged assault of police officer on company property; unrelated to work; insufficient investigation by management; unrecorded past conduct irrelevant; reinstatement with compensation. *Re Miron Inc. & Teamsters, Local 91; Joannis grievance*, December 12, 1985. Frankel — 27 pages. (38)†

Cruelty to animals — admitted by grievors; isolated, momentary event; no premeditation; insufficient warning by employer; good work records; two-month suspension without pay substituted. *Re Canada Packers Poultry, Division of Canada Packers Ltd. & U.F.C.W., Local 1105P; Aitchison and Clark grievance*, December 18, 1985. E.B. Jolliffe — 24 pages. (39)†

Culminating incident — grievor inattentive resulting in loss to company; poor work record; reported lapses of attention in last five months of employment; grievance dismissed. *Re Galtaco Inc. & Int'l. Molders and Allied Workers; Kopatch grievance*, December 18, 1985. Samuels — 5 pages. (40)

Fraudulent use of parking passes — no mitigating factors to lessen penalty; grievance dismissed. *Re Ottawa Civic Hospital & C.U.P.E., Local 576; Mallette grievance*, November 18, 1985. Abbott, Finn, Cyr — 9 pages. (41)

Impaired driving during the course of employment — grievor abstaining from alcohol consumption for more than a year; grievor's attitude good; conditional reinstatement without compensation. *Re Gorski Bulk Transport Inc. & Teamsters, Local 880; Trombley grievance*, December 13, 1985. Majority: Kates, Baillargeon; dissent: Burnell — 30 pages. (42)

Incitement of strike action alleged — counselling employees to participate in deliberate work slowdown and to introduce quality defects; no mitigating factors; grievance dismissed. *Re Commodore Business Machines Limited & U.S.W.A., Local 6269; Chonevski grievance*, November 19, 1985. Little — 31 pages. (43)

Insubordination — failure to obey direct orders; clear and reasonable order communicated to grievor but grievor refused to perform the work; collective agreement stipulates discharge for this specific infraction; grievance dismissed. *Re Becker Milk Co. Ltd. & Teamsters, Local 647; Lalonde grievance*, December 6, 1985. Willes — 16 pages. (44)†

Insubordination — grievor refused direct orders and used abusive language towards his supervisor; grievance dismissed. *Re Welles Corp. Ltd. & U.A.W., Local 195; Gardiner grievance*, October 10, 1985. Rayner — 23 pages. (45)



Insubordination — grievor refused to follow direct orders and urged another employee to disobey; grievor a productive worker and freely acknowledged his wrongdoing; three-month suspension substituted. *Re Stanley Door Systems Ltd. & United Brotherhood of Carpenters and Joiners, Local 2679; Laurie grievance*, December 23, 1985. H.D. Brown — 8 pages. (46)†

Persistent failure to meet production standards — no culminating incident established; no evidence that production standards reasonable; grievance allowed. *Re Maple Leaf Plastics Corporation & International Leather Goods, Plastic and Novelty Workers, Local 8; Dicamillo grievance*, December 6, 1985. Kruger — 7 pages. (47)†

Possession of drugs for the purpose of trafficking — posing a threat to employer and fellow workers; grievance dismissed. *Re General Motors of Canada Limited & U.A.W., Local 222; Walton grievance*, July 2, 1985. Palmer — 5 pages. (48)\*

Quit alleged — established; grievance dismissed. *Re Steinberg Inc. (Miracle Food Mart) & U.F.C.W.; Josephs grievance*, December 9, 1985. Black — 15 pages. (49)†

Quit alleged — resignation established by subjective and objective conduct of grievor; grievor repudiated resignation next day; grievance allowed. *Re Mississauga Concrete Supply & Teamsters, Local 230; Wilson grievance*, December 19, 1985. Knopf, McKeown, Beaulieu — 17 pages. (50)

Refusal to accept work — grievor unable to work the night shift for medical reasons; employer terminated employment on unreasonable grounds; grievance allowed. *Re Solaray & Canadian Textile and Chemical Union; Hill grievance*, December 26, 1985. E.B. Jolliffe — 25 pages. (51)†

Repeated refusal to work overtime — no explanation given by grievor, agreement held to allow compulsory overtime; reinstatement with suspension. *Re Seven-Up/Pure Spring of Ottawa, Division of Seven-Up Canada Inc. & Brewery Workers, Local 387; Page grievance*, November 30, 1985. H.D. Brown — 19 pages. (52)\*

Theft — evidence established on balance of probabilities that grievor guilty of theft of two shock absorbers from plant; grievance dismissed. *Re Walker Exhausts & U.S.W.A., Local 2894; Whalen grievance*, December 11, 1985. O'Shea — 14 pages. (53)

Theft of company property — grievor having excellent work record but poor conduct record; company policy of demerit points not entirely clear; reinstatement without compensation. *Re Algoma Steel Corporation Limited & U.S.W.A., Local 2251; Fremlin grievance*, December 10, 1985. Majority: Barton, Woodcock; dissent: Forbes — 11 pages. (54)

Work performance — company cannot rely on undisciplined events to support culminating incident claim; progressive discipline must be applied; discharge excessive; two-week suspension substituted. *Re Weetabix of Canada (Mfg.) Ltd. & U.F.C.W., Local 1230-8; Macklin grievance*, December 2, 1985. Devlin — 13 pages. (55)†

### Discipline

Absence from mandatory overtime shift — employer's special discipline rules insufficiently communicated; union knowledge does not suffice; one-day suspension reduced to written warning. *Re H.E. Vannater Ltd. & U.A.W., Local 251; Simpson grievance*, November 26, 1985. Gandz — 7 pages. (56)†

Absence from worksite without authorization — grievor union Chief Steward; failure to adequately comply with union business authorization procedures; actions immediately corrected; three-day suspension reduced to one and a half days. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; DeCarlo grievance*, December 20, 1985. Gorsky — 37 pages. (57)†

Absenteeism — failure to substantiate medical reasons for absence; poor past record; grievance dismissed. *Re Gates Canada Inc. & United Rubber Workers; Vandyk grievance*, December 4, 1985. Lerner — 10 pages. (58)†

Absenteeism — lack of specificity of alleged offences against the grievor; five-day suspension not justified; grievance allowed. *Re Walker Exhausts & U.S.W.A., Local 2894; Baker grievance*, September 5, 1985. Palmer — 6 pages. (59)

Incitement of strike alleged — concerted effort to influence employees to refuse overtime as pressure tactic on company; grievance dismissed. *Re Standard Modern Technologies & U.S.W.A., Local 3252; Lizinski grievance*, December 4, 1985. Houston — 9 pages. (60)†

Dress code violations — code not unreasonably applied and does not constitute imposition of a uniform; sending home to change with no loss of pay not punishment; grievance dismissed. *Re Miracle Food Mart Steinberg Inc. (Ontario) & U.F.C.W., Locals 175 and 633; Pasquale grievance*, December 4, 1985. Baum — 17 pages. (61)†

Duty of fidelity — disciplinary transfer in response to business initiative taken by grievor which employer characterized as conflict-of-interest; duty of loyalty tempered by obligations of employer to client/employee; no loss occasioned to employer; grievance allowed. *Re Canadian National Institute for the Blind & Canadian Union of Blind and Sighted Merchants; Sullivan grievance*, December 3, 1985. Adamson — 8 pages. (62)†

Failure to provide medical certificate on time on two occasions — grievor suspended both times for one day; no progressive discipline; written warning substituted for first infraction; grievance allowed in part. *Re Toronto, Corporation of the City of & C.U.P.E., Local 79; Evans grievances*, November 29, 1985. M. Picher — 15 pages. (63)

Failure to remain at work station during emergency breakdown until repair completed or replacement found — grievor erroneously believing he was justified in leaving, having already worked considerable overtime that week; long seniority and clear record; grievance allowed in part. *Re Domtar Fine Papers & Canadian Paperworkers, Local 338; Riviere grievance*, November 12, 1985. Little, O'Shea, Paxton — 10 pages. (64)

Harassment of supervisor at company golf tournament — grievor provoked supervisor into a fight and intimidated supervisor's family later that evening; forty-day suspension justified; grievance dismissed. *Re Welland Chemical Ltd. & E.C.W.U., Local 914; Jacques grievance*, November 29, 1985. McLaren — 10 pages. (65)

Improper completion of log sheets — no wilful intent on grievor's part; insufficient instructions given; grievance allowed, suspension removed with compensation. *Re McKinlay Transport Ltd. & Teamsters, Local 938; Brown grievance*, August 20, 1985. Majority: O'Shea, Petryshen; dissent: Harker — 31 pages. (66)

Insubordination alleged — established; grievance dismissed. *Re Quality Meat Packers Limited & U.F.C.W.; Martins grievance*, November 25, 1985. Kirkwood — 8 pages. (67)†

Insubordination alleged — vague threat to foreman by grievor in context of discussion of letter of discipline; misconduct different from past record; misconduct not privileged as part of grievance procedure; penalty too severe; threat not serious nor taken seriously; grievance allowed in part. *Re Maple Lodge Farms Ltd. & U.F.C.W.; Machado grievance*, December 5, 1985. Majority: Swan, Beaulieu; dissent: MacDermid — 13 pages. (68)\*

Insubordination — grievor disobeying orders; no clear intent to disobey; penalty too severe; written warning substituted for suspension. *Re Inmont Canada Incorporated & E.C.W.U., Local 25; Hockin grievance*, October 8, 1985. Palmer — 9 pages. (69)

Insubordination — grievor disputing responsibility for a particular job function in insolent manner to supervisor in presence of new employee; job function performed by grievor in fact; suspension reduced to written warning. *Re Sault Ste. Marie General Hospital & O.P.S.E.U., Local 620; Wuori grievance*, December 6, 1985. Wilson, Bernardi, Beaulieu — 10 pages. (70)

Insubordination — refusal to follow order to clean work area; amendment made to letters of discipline concerning further corrective measures for further violation of company rules and policies; grievance allowed in part. *Re Alcan Canada Products, Muskoka Works & U.S.W.A., Local 9096; Barty grievance*, December 4, 1985. Joyce — 8 pages. (71)†

Insubordination — refusal to obey foreman's instruction not motivated by safety concerns; instruction reasonable and legitimate; one-day suspension appropriate; grievance dismissed. *Re CAE Diecast Ltd. & I.A.M., Local 2719; Ursacki grievance*, November 29, 1985. Joyce — 9 pages. (72)†

Lack of honesty in internal investigation — grievor's version of events sufficiently disproven; honesty and candor a legitimate management concern; written warning upheld; grievance dismissed. *Re Scarborough Centenary Hospital & O.N.A.; West grievance*, December 16, 1985. Baum — 7 pages. (73)\*

Leaving job site after reporting for work alleged — grievor merely picking up cheque; does not constitute reporting for work; grievance allowed. *Re Kendall Canada & U.S.W.A., Local 8505; Evans grievance*, November 29, 1985. Langille — 10 pages. (74)†

Obscene gesturing towards foreman and insubordination — gesturing insufficiently proven; insubordination shown and punishable even though not grievor's immediate foreman; one and a half day suspension reduced to written warning. *Re Quality Meat Packers Ltd. & U.F.C.W.; Lawrence grievance*, December 10, 1985. Houston — 7 pages. (75)†

Settlement — withdrawal of one grievance and reduction of suspension for other grievance. *Re V/S Services Ltd. at the Queen Elizabeth Hospital & Workers' Union of Queen Elizabeth Hospital; Cappelletto, Talpa grievances*, June 26, 1985. Palmer — 3 pages. (76)

Smoking in a no-smoking area — conflicting evidence re uniformity of rule application; clear knowledge by grievors of rule and recent determination by management to enforce strictly; legitimate concern; grievance dismissed. *Re Penman's Division, Dominion Textile Inc. & Amalgamated Clothing and Textile Workers; Walker and Baker grievance*, December, 1985. Hearn — 13 pages. (77)†

Unacceptable accounting procedures — eight-week suspension excessive considering no allegation of theft proved by company; two-week suspension substituted. *Re Amherstburg Public Utilities Commission & I.B.E.W., Local 636; Jones grievance*, December 3, 1985. Joyce — 9 pages. (78)†

Work performance unsatisfactory — leaving job to sleep; suspension justified; grievance dismissed. *Re Denison Mines Limited & U.S.W.A.; Fortin grievance*, November 20, 1985. O'Shea — 21 pages. (79)

Work performance — failure to carry out instructions; poor work record; grievance dismissed. *Re Fortress Allatt Limited & Int'l. Woodworkers; Conas grievance*, December 11, 1985. Majority: Swan, Gordon; dissent: Luce — 12 pages. (80)

### Employment Status

Full-time hours worked regularly enough for collective agreement application — incorrect classification a continuing breach; time limit runs from discharge; no estoppel; objections dismissed. *Re Windsor Arms Hotel Ltd. & Food and Service Workers of Canada; Asahina grievance*, November 26, 1985. Devlin — 27 pages. (81)†

Temporary employment justified during periods of heavy workload or backlog — such period ended but employment continued; contingent funding of projects not sufficient to characterize continued employment as temporary; grievance allowed. *Re Windsor, Corporation of the City of & C.U.P.E., Local 543; group grievance*, December 6, 1985. Majority: McLaren, Solberg; dissent: Prince — 31 pages. (82)

### Evidence

Admissibility — evidence of polygrapher as to testing and results of former employee; no employment consequences for person taking test; test taken voluntarily — admissible; interim award. *Re Grandview Lodge (Regional Municipality of Haldimand-Norfolk) & H.O.P.E., Local 206; policy grievance and Middough grievances*, December 4, 1985. Majority: Samuels, Borden; dissent: Rudrum — 9 pages. (83)\*

Admissibility of: (1) discussions made in course of grievance procedure, (2) company's written replies, (3) evidence of company's actions subsequent to grievance: No. 2 admissible because required by collective agreement; Nos. 1 and 3 admissible insofar as show settlement; interim award. *Re Sterling Drug Ltd. & E.C.W.U., Local 435; Allan grievance*, December 11, 1985. Solomatenko — 12 pages. (84)†

Admissibility — threats made to management in context of grievance procedure not conducive to settlement of grievance are not privileged communications and therefore admissible. *Re Maple Lodge Farms Ltd. & U.F.C.W., Machado grievance*. See (68) *supra*. (85)\*

### Grievance Procedure

Failure to discuss grievance with supervisor first — collective agreement mandates initial discussion; grievances partially allowed. *Re TDL Woodtreating Ltd. & C.U.O.E., Local 101; Grgar et al grievances*, December 17, 1985. Egan — 11 pages. (86)†

Grievance filed at arbitration stage — failure to comply with grievance procedure; grievance not arbitrable. *Re Hanson Inc. & U.S.W.A., Local 14183; Dundas grievance*, November, 1985. Majority: Kruger, Blair; dissent: Nicol — 11 pages. (87)

Settlement decision of preferred status for grievor communicated by management and then revoked — not allowed; "without prejudice" does not affect binding nature of decision; no overt acceptance by union required; settlement binding. *Re Ottawa-Carleton, Regional Municipality of & C.U.P.E., Local 503; O'Connor grievance*, December 13, 1985. Pyle — 38 pages. (88)†



Timeliness of referral to arbitration pursuant to s. 45 *Labour Relations Act* — untimely; grievance inarbitrable. *Re St. Joseph's Hospital, Brantford & O.N.A.; Padamadan grievance*, December 5, 1985. Davis — 7 pages. (89)†

#### Health & Safety

Bomb threat — immediately after seeking advice from police and organization of search of exitways, employees and union representatives entitled to be informed of bomb threat, course of action taken and reasons for action; union representative entitled to be present at search and investigation; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; policy grievance*, November 29, 1985. Burkett — 13 pages. (90)\*

#### Holiday Pay

Entitlement — intervening strike — withdrawal of services occurring after the statutory holiday; employees should not be denied pay for that day; grievance allowed. *Re Canadian General-Tower Ltd. & United Rubber Workers, Local 3862; policy grievance*, December 11, 1985. E.B. Jolliffe — 20 pages. (91)†

Holiday wage rate lessened when scheduled shift falls on holiday — collective agreement sanctions; bona fide error in payment for less than a year does not create estoppel; grievance dismissed. *Re Ethyl Canada Inc. & E.C.W.U., Local 300; Lacey and Hilbert grievance*, December 2, 1985. Boscarol — 6 pages. (92)†

Lay-off — collective agreement negotiated by a predecessor employer; employees on lay-off for six months due to renovations — language of collective agreement entitles employees to pay for listed holidays; grievance allowed in part. *Re Canada Packers & U.F.C.W., Local 139; policy grievance*, December 23, 1985. Swan; dissent in part: Williamson, Beaulieu — 30 pages. (93)\*

Maternity leave — pay for statutory holidays granted, but not for extended leave; collective agreement considered; grievance partially allowed. *Re FBI Foods Ltd. & U.F.C.W., Local 172-2; Loshaw grievance*, December 10, 1985. Emrich — 20 pages. (94)\*

#### Illness

Verification of fitness demanded before return to work following a compensable injury period — right of employer upheld; no bad faith or improper purpose; grievance dismissed. *Re Shopsy's Foods Ltd. & U.F.C.W., Local 175; Dunphy grievance*, November 29, 1985. Saltman — 13 pages. (95)†

#### Job Evaluation

Education, experience, and responsibility requirements — benchmark job classification test fails to result in upgrading; insufficient evidence of improper evaluation; grievance dismissed. *Re Wabco Ltd. & U.E., Local 558; union grievance*, November 11, 1985. McKechnie — 9 pages. (96)†

Job evaluation committee provisions of collective agreement ignored by management — time limit for meeting not mandatory; committee to be used for all claims; pre-collective agreement relevant evidence not barred from committee consideration; grievance allowed. *Re Woodbridge Foam Corporation & U.A.W., Local 112; Asyemang grievance*, December 13, 1985. Solomatenko — 12 pages. (97)†

New job classification created — pay rate set at the same rate as similar job; new job not requiring more skill; no justification for increasing pay rate; grievance dismissed. *Re Infasco Nut Company, Division of Ivaco Inc. & U.S.W.A.; union grievance*, November 27, 1985. Andrews — 11 pages. (98)

#### Lay-Off

Bumping rights — bumped grievor has seniority in classification only; collective agreement clear; classification seniority supersedes; grievance allowed. *Re Braund Supergraving Co. Ltd. & Graphic Communications Int'l. Union, Local 500M; Gosai grievance*, December 17, 1985. Egan — 6 pages. (99)†

Bumping rights — grievor entitled to bump to classification desired, but not to CNC lathe since not qualified to operate; would be entitled to training on CNC lathe; grievance allowed. *Re Ex-Cell-O Corporation Limited & Int'l. Molders & Allied Workers; McKenzie grievance*, December 10, 1985. Swan — 16 pages. (100)

Bumping rights — restriction against bumping during shut-down with option to use vacation, held that restriction applies to all employees; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Local 5980; policy grievance*, December 12, 1985. Saltman — 4 pages. (101)

Extent of bumping rights — chain bumping permitted; grievance allowed. *Re Moloney Electric Corp. & U.E.; policy grievance*, November 29, 1985. Majority: M. Picher, Knipfel; dissent: Addario — 14 pages. (102)\*

Casual part-time worker denied work because of budget restraints — constitutes lay-off; collective agreement does not distinguish between casual and regular part-time; bumping allowed; grievance allowed. *Re Sunnybrook Hospital & Sunnybrook Hospital Employees' Union, Local 777; Joseph grievance*, November 25, 1985. Foisy — 13 pages. (103)†

Qualifications — grievor lacking programming experience reasonably required for positions claimed; grievances dismissed. *Re Sunbeam Home (Kitchener) & London and District Service Workers; Chapman grievance*, October 2, 1985. Majority: Rose, Carrier; dissent: Herbert — 6 pages. (104)

Qualifications — orientation period provided for; no duty to train; grievor could not perform job satisfactorily at end of period; grievance dismissed. *Re Otis Canada Inc. & U.S.W.A., Local 7962; Savickis grievance*, November 29, 1985. Barton — 13 pages. (105)†

Seniority — company established a separate department for seniority purposes in violation of provisions of collective agreement; grievance allowed. *Re Consumers' Glass Co. Ltd. & Aluminum, Brick and Glass Workers, Local 200G; group grievance*, December 12, 1985. Davis — 15 pages. (106)†

Training provision to avoid lay-off — held that employer required to train more than one employee at a time and not limited by number of positions available; grievor improperly denied training; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Local 5980; Nichols grievance*, December 12, 1985. Saltman — 11 pages. (107)

#### Leave of Absence

Denial — minimal disruption to company; presumptive right in collective agreement; individual consideration not given here; insufficient reason for denial; grievance allowed. *Re Intercraft Industries of Canada Ltd. & United Brotherhood of Carpenters and Joiners, Local 2679; Juneja grievance*, December 18, 1985. Solomatenko — 13 pages. (108)\*†

Leave for personal reasons — management policy circumscribing right to personal leave; grievance allowed. *Re Metropolitan Toronto Library Board & C.U.P.E., Locals 1582 and 1806; policy grievances*, December 2, 1985. Majority: Knopf, Nairn; dissent: Fillion — 15 pages. (109)

**Overtime**

Distribution — declared to be plant-wide, not departmental provided employee qualified to do work required; grievance dismissed as grievor had already attained equitable distribution. *Re Jarvis Clark Co. (C.I.L. Inc.) & U.S.W.A., Local 7282; Houle grievance*, December 20, 1985. O'Shea — 14 pages. (110)

Distribution — to be by classification and shift, but does not preclude assignment of other work if properly distributed overtime work completed early; grievance dismissed. *Re Webster Mfg. (London) Ltd. & Int'l. Molders and Allied Workers, Local 49 (London); McLaughlin grievance*, December 19, 1985. Gorsky — 9 pages. (111)

Distribution — work done by persons normally doing this work during regular hours; grievance dismissed. *Re Abex Industries Limited, Friction Products Division, Lindsay, Ontario & U.S.W.A., Local 4927; Hutchinson and Brasier grievance*, October 9, 1985. Palmer — 5 pages. (112)

Entitlement — grievor not able to establish that he would normally perform the work; grievance dismissed. *Re Kenroc Tools Corporation & U.S.W.A., Local 8747; Cowden grievance*, December 12, 1985. Freedman — 15 pages. (113)

Entitlement — overtime assigned to summer students over full-time employees; violation of collective agreement since bargaining unit employees were able and willing to perform the work in question; grievance allowed. *Re Webster Mfg. Ltd. & Int'l. Molders and Allied Workers, Local 49; group grievance*, November 29, 1985. M. Picher — 10 pages. (114)

Payment for meal break while working scheduled overtime claimed — grievors receiving higher rate of pay for working paid holidays; paid meal break not applicable; grievance denied. *Re Atomic Energy of Canada Limited & The Public Service Alliance, Local 70367; Belanger and Trudel grievances*, November 12, 1985. Majority: Simmons, Healy; dissent: Caron — 16 pages. (115)

**Overtime Pay**

Calculation where overtime worked in 24-hour non-flight period — agreement clear that non-flight overtime to be credited and not paid as overtime; grievance dismissed. *Re Nordair Ltd. & C.A.L.F.A.; Gauthier grievance*, November 28, 1985. Burkett — 10 pages. (116)

Entitlement — grievor working in excess of eight hours per day (i.e. calendar day); grievor entitled to more overtime pay than claimed; relief restricted to that claimed by grievor. *Re Chrysler Canada Limited & C.U.O.E., Local 100; Armbruster grievance*, December 13, 1985. O'Shea — 13 pages. (117)\*

Two shifts worked in 23-hour turnaround period — overtime applies to scheduled shift only if less than 23 hours allowed; working voluntary shift in 23-hour period does not attract overtime pay to scheduled shift; grievance dismissed. *Re Sarnia General Hospital & London and District Service Workers, Local 220; Verlinde grievance*, November 27, 1985. Burkett, Anissimoff, Isber — 10 pages. (118)

**Pensions**

Delay between retirement and receipt of first superannuation cheque — employer not responsible for payment of interest since Superannuation Division of Department of Supply and Services responsible; grievance dismissed. *Re The Canada Post Corporation & Letter Carriers Union; Laidlow grievance*, December 20, 1985. Kates — 6 pages. (119)

Pensionable service — not including employment service where no employee contributions made to the pension plan; grievance dismissed. *Re Abitibi-Price Inc. & Canadian Paperworkers; union grievance*, November 30, 1985. Majority: Kates, Burnet; dissent: Lenkinski — 31 pages. (120)

**Probationary Employee**

Lay-off a colourable attempt to discharge — grievor has substantive rights, only of a lesser degree; insufficient grounds for discharge; reinstatement with compensation. *Re FBI Foods Ltd. & U.F.C.W., Local 1172-2; Foote grievance*, December 10, 1985. Emrich — 16 pages. (121)†

**Promotion**

Academic merit — incomplete consideration by reviewing committee; collective agreement sets guidelines; reasons must show consideration; referred back for re-consideration; grievance partially allowed. *Re Laurentian University & Laurentian University Faculty Association; Mahant grievance*, December 6, 1985. Solomatenko — 26 pages. (122)†

Entitlement to consideration and qualifications — overseer position with greater benefits a promotion, but no contractual obligation to post job or consider future transferees; collective agreement considered; grievance dismissed. *Re Electrohome Ltd. & I.B.E.W., Local 2345; McKenzie, MacDonald grievance*, December 12, 1985. Gandz — 10 pages. (123)†

Qualifications — company breached collective agreement when it compared the test results of a non-bargaining unit employee with the grievor; breach not resulting in grievor being awarded the job; grievance allowed in part. *Re McDonnell Douglas Canada Ltd. & U.A.W. Local 673; Galena grievance*, December 20, 1985. Burkett — 16 pages. (124)

Qualifications — company preference for more up-to-date skill and experience than the grievor possessed not unreasonable; grievance dismissed. *Re Canadian General Electric Co. Ltd. & U.E., Local 524; Menzies grievance*, November 27, 1985. Draper — 5 pages. (125)†

Qualifications: competition clause — grievor with seniority possesses minimum qualifications at time of application, but union employee has greater expertise; grievance dismissed. *Re Hamilton Civic Hospitals & C.U.P.E., Local 794; Fletcher grievance*, December 18, 1985. Foisy — 11 pages. (126)†

Qualifications — grievor lacking experience in perinatal programme and recent case room experience; not relatively equal; full regular interview ought to have been given and prospective order granted to so provide on next posting; grievance dismissed. *Re Ottawa Civic Hospital & O.N.A.; Allam grievance*, November 30, 1985. Fraser — 11 pages. (127)†

Qualifications — grievor not possessing threshold ability to be considered for the job; grievance dismissed. *Re Chromalox Canada Inc. & U.A.W.; Gaudet grievance*, November 29, 1985. O'Shea — 10 pages. (128)

Qualifications — grievor with more seniority lacked requisite skill and ability to do the job; grievance dismissed. *Re Courtice Steel Ltd. & U.S.W.A., Local 8918; Gligor grievance*, December 6, 1985. E.B. Jolliffe — 18 pages. (129)†

Qualifications — grievor selected for job by committee but then refused on grounds of disputed educational qualification; education only one criteria and should not be the determining one; grievor best qualified applicant; grievance allowed. *Re Windsor, Corporation of the City of & C.U.P.E., Local 543; Jennings grievance*, December 12, 1985. Hinnegan — 17 pages. (130)

Qualifications — if basic requirements met full-time employee to be given preference over part-time; minor disciplinary incidents dismissed; grievance allowed and grievor awarded position. *Re Mount Sinai Hospital & O.N.A.; Ferrier grievance*, November 29, 1985. Majority: P. Picher, McIntyre; dissent: Boettcher — 28 pages. (131)



Qualifications: requirement of a road test — grievor did not meet the standards properly set for the job; grievance dismissed. *Re Weston Bakeries Ltd. & R.W.B.C.W., Local 461; Wassing grievance*, December 12, 1985. Weatherill, Dahmer, Snow — 7 pages. (132)

#### Recall

Entitlement — grievors having qualifications to entitle them to be offered temporary or permanent openings in base department; grievance allowed. *Re Ford Motor Company of Canada Ltd. & U.A.W., Local 1520; group grievance*, April 22, 1985. Palmer — 7 pages. (133)

Temporary labourer's work required by company — grievor having right to be offered work; grievance allowed. *Re Hagar, Corporation of the Township of & U.S.W.A.; Morrel grievance*, December 23, 1985. Majority: Knopf, Farrell; dissent: Wuksinic — 7 pages. (134)

#### Reporting Allowance

Entitlement — employees sent home due to excessive flooding not proved to be a condition beyond company's control; grievance allowed. *Re Duomatic Olsen Inc. & U.S.W.A., Local 8222; group grievance*, December 16, 1985. Hinnegan — 8 pages. (135)†

#### Scheduling of Work

Alteration of schedule to give different starting times during week — agreement allows for combination of shifts in one schedule; grievance dismissed. *Re The Spectator, a Division of Southam, Inc. & Graphic Arts Union, Local 669; policy grievance*, November 25, 1985. Majority: Weatherill, Williams; dissent: Pepe — 13 pages. (136)

Unilateral change in starting times from posted schedule constituting "call out" — held that working into second half of posted shift before being sent home gives rise to reporting pay; grievance allowed. *Re Spruce Falls Power and Paper Co. Ltd. & Lumber and Sawmill Workers, Local 2995; group grievance*, March 12, 1985. Palmer, Fyshe, Ubels — 9 pages. (137)

#### Seniority

Dovetailing of two employee groups most fair — full and equal recognition of seniority of each employee. *Re Canadian Pacific Express and Transport & Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; union grievance*, November 19, 1985. Teplitsky — 5 pages. (138)

Dovetailing when employees transferred from one terminal to another as a result of a company closure — company not restricted to one province; company within its rights to transfer employees and dovetail seniority. *Re Bondy Cartage Limited & Teamsters, Local 880; union grievance*, November 14, 1985. M. Picher — 11 pages. (139)

Loss of seniority — failure to return to work after a lay-off within the stipulated time period; grievor actually returned but without proper work clothing; seniority returned to grievor but no compensation; grievance allowed in part. *Re Varta Batteries Ltd. & U.A.W., Local 124; Pearson grievance*, November 28, 1985. Hinnegan — 8 pages. (140)

Return to bargaining unit from management and subsequent lay-off — restoration of full seniority a benefit not accruing while laid off; collective agreement considered; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 27; Merrifield grievance*, November 25, 1985. Egan — 6 pages. (141)†

#### Sick Pay

Entitlement — company failed to allow payment under the weekly benefit plan in accordance with the collective agreement; declaration that company stop such practice; award not to affect rights parties have under company's sick leave policy because it is not part of the collective agreement. *Re Westbend Canada Ltd. & U.S.W.A., Local 6105; policy grievance*, December 16, 1985. Gorsky — 14 pages. (142)

Payment claimed in addition to holiday pay — double pay not compatible with indemnification purpose of sick pay; neither collective agreement nor past practice supports; grievance dismissed. *Re Nabisco Brands Ltd. & Int'l. Brotherhood of Firemen and Oilers, Local 101; Fleming grievance*, December 9, 1985. Gandz — 5 pages. (143)†

#### Union Rights

Entitlement to wages during plant shutdown — grievors entitled to payment and their time spent on union business not to be charged against them as vacation time; grievance allowed. *Re Fleet Industries & I.A.M., Local 171; policy grievance*, December 30, 1985. Dunn — 8 pages. (144)

#### Union Security

Non-remittance of dues — employer must comply from date of employment; employees historically not included in bargaining unit not affected by collective agreement ambiguity; grievance partially allowed. *Re Genosha Hotel & Hotel Employees, Restaurant Employees and Bartenders, Local 280; policy grievance*, November 27, 1985. Houston — 6 pages. (145)†

#### Vacations

Entitlement — unilateral change to equate "days" to 8 hours, employer estopped by past practice; grievance allowed. *Re Oshawa/Whitby Crisis Intervention and Rehabilitation Centre (Frontenac Youth Services) & O.P.S.E.U., Local 302; Anthony, Jones and O'Rourke grievances*, November 28, 1985. Devlin, Garrett, Herbert — 10 pages. (146)

Scheduling — no more than two employees allowed off at one time — employer exercising discretion in fair and reasonable manner; grievance allowed in part since failure to report final vacation schedule. *Re Maple Leaf Mills Ltd. & E.C.W.U., Local 539; policy grievance*, November 18, 1985. M. Picher — 24 pages. (147)

Timing preference — unless employee makes timely election of vacation preference, company not contractually required to meet vacation wishes by arranging for overtime replacements; grievance dismissed. *Re Alcan Canada Products Limited, Muskoka Works & U.S.W.A., Local 9096; Hewitt grievance*, December 6, 1985. Joyce — 10 pages. (148)†

#### Vacation Pay

Calculation — company mistakenly reading the Article backwards; grievance allowed but without interest. *Re Beacon Hill Lodges of Canada Ltd. & S.E.U., Local 210; Brucal grievance*, December 18, 1985. Welling, Hussey, Quinlan — 8 pages. (149)

Paid absence allowance — full pay under absence allowance results in higher vacation pay total than would otherwise accrue; clause held to require full pay for absences; grievance allowed. *Re International Harvester Co. of Canada Ltd. (Chatham) & U.A.W., Local 127; policy grievance*, November 29, 1985. Welling — 8 pages. (150)

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1 Publication

# Monthly Bulletin



Ontario Ministry of Labour



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T.E. Armstrong, QC, Deputy Minister

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persons involved in labour-management  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1980, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of January, 1986. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Approved Arbitrators

Please note that Professor Ian A. Hunter and Professor Joseph B. Rose have returned from sabbatical leave, and are once again available for arbitration cases.



## Change of Address

The following changes should be noted:

Professor Richard D. Abbott, 196 Hopewell Avenue, Ottawa, Ontario, K1S 2Z5, Telephone: (613) 232-7523.

Mr. Frank V. Boscariol, 158 Hudson Drive, Toronto, Ontario, M4T 2K6, Telephone: (416) 482-3223.

Ms. Paula S. Knopf, 4 Biggar Avenue, Toronto, Ontario, M6H 2N4, Telephone: (416) 652-1516 (unchanged).

Mr. Douglas C. Stanley, Arbitration Services, Suite 1050, 595 Bay Street, Toronto, Ontario, M5G 2C2, Telephone: (416) 596-2394.

Telephone numbers have been changed at Queen's University (Faculty of Law) to (613) 545-2220.

Telephone changes at University of Western Ontario are as follows:

Professors Peter G. Barton: (519) 661-3345 or 679-2111 (Ext. 8439); Gregory J. Brandt: 661-3350; Jeffrey Gandz: 661-3224; Morley R. Gorsky: 661-3349; Ian A. Hunter: 661-3351; Wesley B. Rayner: 661-3346; Richard J. Roberts: 679-2111 (Ext. 8432); Bruce Welling: 679-2111, (Ext. 8427).

## Arbitrability

Casual employee — teacher required to have taught sixty days in preceding sixty months in order to grieve — requirement not met; grievance dismissed. *Re Toronto Board of Education & O.P.S.E.U.*; *Lithwick grievance*, January 9, 1986. Majority: Burkett, Light; dissent: Switzman — 7 pages. (1)

Discharge of probationary employee — no substantive provision in agreement, but implied duty not to act in bad faith found; employer's objection to jurisdiction dismissed. *Re Algonquin College & O.P.S.E.U.*; *Allan grievance*, January 24, 1986. Brent — 19 pages. (2)\*

Discharge of probationary employee — grievor has a right to raise issue of work performance when he has been dismissed for inadequate job performance; interim award. *Re Consumers Glass Co. Ltd. & Aluminum, Brick & Glass Workers*; *Mostafa grievance*, January 2, 1986. Kruger — 17 pages. (3)†

Discharge of probationary employee — no substantive right to grieve discharge conferred — discharge not arbitrable — allegation that reasonable trial period on job not allowed by employer potentially arbitrable; interim award. *Re Consumers Glass Company Ltd. & Aluminum, Brick & Glass Workers*; *Mostafa grievance*. See (3) *supra*. (4)†

Time limits under section 45 — Labour Board's direction to proceed to arbitration, acceded to by the employer effectively extended time limits under the collective agreement; grievance arbitrable. *Re Canadian Union of Operating Engineers and General Workers, Local 101 & Professional and Clerical Workers*; *McManus grievance*, January 16, 1986. E.B. Jolliffe — 15 pages. (5)†

## Bereavement Leave

Death of relative during grievor's vacation — leave on top of vacation claimed; purpose of leave to offset necessary wage loss; served hereby vacation time; collective agreement considered; grievance dismissed. *Re Marks and Spencer & R.W.D.S.U.*, *Local 1002*; *Ford grievance*, January 21, 1986. O'Shea — 8 pages. (6)

## Classification

Demoted employees — employees performing same functions as prior to demotion; employees required to instruct new employees; employees to be compensated for days on which they were required to give extra instruction. *Re Carrier Canada Limited & Sheet Metal Workers, Local 575*; *group grievance*, December 31, 1985. Majority: P. Picher, Addario; dissent: Whittaker — 20 pages. (7)

Temporary change of duties — some new duties similar to those of higher classification; no recognition in collective agreement of hybrid classification; within management rights; no promotion or transfer; grievance dismissed. *Re Oaklands Regional Centre & O.P.S.E.U.*; *MacSorley grievance*, January 24, 1986. Majority: Satterfield, Sargeant; dissent: Robbins — 21 pages. (8)

## Collective Agreement

Bridging clause extending beyond year — clause void; no collective agreement and grievance nullity. *Re United Cigar Stores Group Ltd. & R.W.D.S.U.*, *Local 414*; *Guilbault grievance*, January 9, 1986. Barton — 9 pages. (9)†

## Contracting Out

Contract maintenance personnel — union claims all contractors covered; separate company with own hiring policy and union hired; only workers integrated into employer organization covered by agreement; grievance dismissed. *Re Ontario Hydro & C.U.P.E.*, *Local 1000*; *union grievance*, January 21, 1986. Majority: Burkett, McHenry; dissent: Switzman — 21 pages. (10)

Express limitation on contracting out purposive — operates to prevent contracting out when direct effect is to trigger lay-off; no application to pre-existing lay-off continuing during period of work contracted out; grievance dismissed. *Re St. Mary's General Hospital (Kitchener) & London and District Service Workers Local 220*; *Marton grievance*, December 9, 1985. Majority: Verity, Contini; dissent: Solberg — 10 pages. (11)

Purchasing from outside, pieces of new equipment which could be manufactured within company machine shop — obligation to give notice applicable only to "normal" work assignment of the bargaining unit; grievance dismissed. *Re American Can Canada Inc. & Hamilton Can Workers, Local 354*; *union grievance*, January 8, 1986. M. Picher — 33 pages. (12)

Use of private operators — collective agreement ambiguous; extrinsic evidence inconclusive; wide geographical application more likely; employer violation; grievance allowed. *Re Motorways (1980) Ltd. & Teamsters, Local 990*; *policy grievance*, January 17, 1986. Saltman — 10 pages. (13)

## Damages

Reinstatement ordered in previous award — grievor did not mitigate losses; grievance dismissed. *Re Algoma Steel, Tube Division & U.S.W.A.*, *Local 5595*; *Nelson grievance*, January 15, 1986. McKechnie — 8 pages. (14)†

Return to work after discharge — compensation for time period when grievance referred to arbitration, but not scheduled; union and employer both slow in bringing matter to arbitration; grievor entitled to one-half the amount to which she would otherwise be entitled. *Re Canada Post Corp. & C.U.P.W.*; *Menchion grievance*, January 21, 1986. Burkett — 9 pages. (15)

**Discharge**

Abandonment of position alleged — grievor not intending to abandon his position; failure to notify company of his circumstances not justified; reinstatement without compensation. *Re Canada Post Corp. & C.U.P.W., Wilson grievance*, December 23, 1985. P. Picher — 16 pages. (16)

Absenteeism as the result of excessive drinking — grievor unlikely to be regular in attendance in foreseeable future; grievance dismissed. *Re Canada Post Corporation & P.S.A.C.; Paladeau grievance*, January 15, 1986. Hinnegan — 19 pages. (17)\*

Absenteeism — back problem rendering grievor unable to perform all requisite duties of his classification; failure of company to warn grievor that termination likely from absenteeism rate; onus consequently not shifting to grievor to establish regular future attendance; grievance allowed. *Re Humpty Dumpty Foods Limited & R.W.D.S.U., Local 461; Norton grievance*, December 29, 1985. Majority: Black, Reekie; dissent: Kleiner — 14 pages. (18)

Absenteeism — discipline taken not consistent with innocent absenteeism; grievance allowed, conditional reinstatement dependent upon attendance. *Re Canada Post Corp. & P.S.A.C.; Serpa grievance*, January 22, 1986. Hinnegan — 11 pages. (19)

Absenteeism due to alcoholism — long-standing problem; management assists; no evidence of likelihood of improvement; post discharge evidence too little too late; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 1915; Wauchope grievance*, January 27, 1986. Weatherill — 10 pages. (20)

Absenteeism — grievor absent for eleven weeks following his three week vacation in Lebanon; grievor wounded and required medical treatment; grievor made reasonable efforts to contact the company and provided adequate evidence of his medical condition; grievance allowed. *Re Westinghouse Canada Inc. & U.E., Local 546; Kadri grievance*, January 15, 1986. Barton — 8 pages. (21)†

Absenteeism — primarily innocent; personal problems solved; improvement likely; all evidence prior to leaving considered; reinstatement without compensation. *Re Holmes Foundry, a Division of American Motors (Canada) Ltd. & U.A.W., Local 456; Stanik grievance*, January 24, 1986. Verity — 14 pages. (22)

Abuse of elderly resident — single accusing witness; grievor's long employment record excellent; event found not to have occurred; reinstatement with compensation. *Re Grandview Lodge (Corp. of the Regional Municipality of Haldimand-Norfolk) & Health, Office and Professional Employees, Local 206; Middaugh grievance*, January 8, 1986. Majority: Samuels, Rudrum; dissent: Borden — 17 pages. (23)

Alcoholism — grievor defaults on rehabilitation program and pleads guilty to criminal charge of impaired driving; relatively recent problem; evidence of ability to control; six-month suspension without pay substituted. *Re Ottawa, Corporation of City of & C.U.P.E., Local 503; Côté grievance*, January 17, 1986. Fraser, Tunney, Beaulieu — 17 pages. (24)

Attempted theft alleged — established; position as steward no justification for more severe treatment; four-month suspension substituted; *Re Chromasco, Division of Timminca Limited & U.S.W.A., Local 4632; Kasaboski grievance*, December 31, 1985. Pyle — 23 pages. (25)†

Attitude problems — previous actions had not been met by proper disciplinary steps; employer only entitled to rely on most recent allegation; one-week suspension substituted for discharge. *Re Wallace Sign-Crafters West Ltd. & Int'l. Brotherhood of Painters and Allied Trades, Local 1630; Byrne and Gibson grievances*, January 10, 1986. Joyce — 19 pages. (26)†

Breach of conditional reinstatement — no valid reason for breach; employer did not act arbitrarily or discriminatorily; grievance dismissed. *Re Great Atlantic & Pacific Co. Ltd. & R.W.D.S.U., Local 414; Rutherford grievance*, January 24, 1986. Little, Dinsdale, Dahmer — 23 pages. (27)

Culminating incident — absence from work despite refusal of permission to be absent; past record of excessive absenteeism; partial fabrication of reason for absence constituting insubordination; familial pressures and alcoholism affecting grievor; conditional reinstatement; grievance allowed in part. *Re Fiberglas Canada Inc. & Amalgamated Clothing and Textile Workers, Local 1305; Purdy grievance*, December 30, 1985. McLaren — 15 pages. (28)

Culminating incident: alleged use of drugs at work place — drug incident not proved; grievor's past record cannot be invoked as the basis for discharge; grievance allowed. *Re W. Ralston Inc. & E.C.W.U., Local 819; Lameront grievance*, January 13, 1986. Joyce — 10 pages. (29)†

Culminating incident: deficient operating procedures — mitigating factors; three-month suspension substituted for discharge. *Re Coca-Cola Ltd. & Soft Drink Workers Joint Local Executive Board; Quinn grievance*, January 10, 1986. Devlin — 8 pages. (30)

Culminating incident: poor work performance — grievor not guilty of lack of care in final incident; dismissal action voided; grievance allowed. *Re The Algoma Steel Corp. & U.S.W.A., Local 2251; Giallonardo grievance*, January 16, 1986. Majority: Davis, Woodcock; dissent: Forbes — 15 pages. (31)

Destruction of company property — grievor destroying company property and covering up; poor work record and attitude; grievance dismissed. *Re Heckett (Division of Harsco Corporation) & U.S.W.A., Local 7577; Greathead grievance*, January 17, 1986. Foisy — 12 pages. (32)†

Disrupting other employees in the work place — company making decision to not recall grievor; progressive discipline not being applied; grievance allowed. *Re Associated Fur Industries of Toronto Inc. (Einhorn Furs Limited) & Fur, Leather, Shoe & Allied Workers, Local 82; Missios grievance*, January 9, 1986. Swan — 19 pages. (33)

Drinking during working hours — drinking occurred during a breakdown of equipment; no hazard to safety; suspension substituted for discharge because of rehabilitative potential of grievors. *Re Page-Hersey Works, Stelco Pipe and Tube Co. & U.E., Local 523; Timmers and Melna grievances*, December 30, 1985. Betcherman — 5 pages. (34)†

Falsification of records and reports — grievor abused the system, but his behavior was condoned by company loose practices and lack of firm direction; grievor reinstated, but without compensation for lost time. *Re Loctite Canada Inc. & U.S.W.A., Local 14873; Knechtel grievance*, January 28, 1986. Joyce — 12 pages. (35)†

Fighting on company premises — evidence substantiated the claim; grievance dismissed. *Re United Tire & Rubber Co. Ltd. & United Rubber Workers, Local 687; Carreira grievance*, December 31, 1985. Burkett — 13 pages. (36)



Insubordination — attitude problem immediately following probationary period, not fit for employer/employee relationship; grievance dismissed. *Re University of Toronto & I.U.O.E., Local 796; Bacus grievance*, January 23, 1986. O'Shea — 11 pages. (37)†

Insubordination — leaving work early despite refusal of request to leave early for health reasons; refusal of permission because of suspicion as to legitimacy of grievor's back problems unreasonable; grievance allowed. *Re Meat Connection Inc. & U.F.C.W., Local 1105P; Dafoe grievance*, December 20, 1985. Solomatenko — 22 pages. (38)\*†

Marijuana smoking while on duty — grievor shedding marijuana dependency and capable of performing duties; grievance allowed in part. *Re Mount Sinai Hospital & S.E.U., Local 204; Currie grievance*, January 9, 1986. Majority: P. Picher, Solberg; dissent: Boettcher — 13 pages. (39)

Negligence — allowing a passenger to operate controls and drive streetcar — high standard of care and conduct expected of operators of common carriers; no compelling reasons to mitigate; grievance dismissed. *Re Toronto Transit Commission & A.T.U., Local 113; Nichol grievance*, December 29, 1985. Majority: Black, Reistetter; dissent: Switzman — 15 pages. (40)\*

Physical incapacity — no light work available to accommodate grievor's limitations; discharge not disciplinary; grievance dismissed. *Re Canada Post Corp. & P.S.A.C.; Nayyar grievance*, January 22, 1986. Hinnegan — 12 pages. (41)

Refusal to work overtime — grievor providing valid reason, but company not following up on it; no just cause for discharge; grievance allowed. *Re H.E. Vannatter Limited & U.A.W., Local 251; Gauthier grievance*, January 21, 1986. Hunter — 14 pages. (42)†

Talking with other employees while at work — culminating incident alleged; no loss of production; work record does not support discharge; reinstatement with compensation and written warning. *Re Marimac Inc. & Amalgamated Clothing and Textile Workers, Local 2343; Lalonde grievance*, January 23, 1986. Kuttner — 17 pages. (43)

Theft — dishonesty breaches contract of employment; just cause established; grievance dismissed. *Re C.F.N.Y., a Division of Selkirk Broadcasting Ltd. & Bauer; s. 61.5 Canada Labour Code adjudication*, January 9, 1986. H.D. Brown — 34 pages. (44)

Theft — fraudulent possession of goods which were the property of the employer; grievance dismissed. *Re Canada Packers Inc. & U.F.C.W.U., Local 114P-2; Cooke grievance*, January 7, 1986. Egan — 16 pages. (45)†

Theft — grievor attempted to steal milk and chip dip from retail food store; grievance dismissed. *Re Canada Safeway Ltd. & U.F.C.W.U., Local 409; Larson grievance*, January 10, 1986. Joyce — 11 pages. (46)†

Work performance — grievor allowed a reasonable trial period on the job; grievor did not demonstrate that he could do the job; grievance dismissed. *Re Consumers Glass Co. Ltd. & Aluminum, Brick & Glass Workers, Mostafa grievance*, January 27, 1986. Kruger — 5 pages. (47)†

Work performance — grievor employed as a technologist in microbiological laboratory; performance fell far short of standard to be expected — hospital had given ample warning and opportunity to improve; grievance dismissed. *Re St. Joseph's Hospital & London and District Service Workers, Local 220; Khanna grievance*, January 14, 1986. Davis — 33 pages. (48)†

Work performance — lack of production and negative attitude — no culminating incident; excessive wandering from work station proved; five-day suspension substituted for discharge. *Re Lisi Aero-Guide Inc. & Sheet Metal Workers, Local 47; Baker grievance*, January 20, 1986. Willes — 12 pages. (49)†

Work performance — persistent below-standard production despite full range of progressive discipline — production standard not unreasonable; allegation of discriminatory treatment unsubstantiated; grievor not evincing willingness to improve; grievance dismissed. *Re Morton-Parker Limited & S.E.U., Local 183; Collins grievance*, December 20, 1985. Willes — 17 pages. (50)

### Discipline

Absenteeism — letter in personnel file; letter not disciplinary nor discriminatory just part of a legitimate company policy; grievance dismissed. *Re Children's Hospital of Eastern Ontario & O.N.A.; Padmore grievance*, January 10, 1986. Roach — 19 pages. (51)†

Dishonest conduct alleged — company failing to establish on the balance of probabilities, just cause for disciplinary action; grievance allowed. *Re Boise Canada Ltd. & United Paperworkers, Local 92; Bedard grievance*, January 21, 1986. Boscarior — 8 pages. (52)†

Failure to meet production standard — no attack on propriety of standard; grievor's failure to meet standard owing to lack of effort; excuses not substantiated; grievance dismissed. *Re I.T.T., Aimco Division & U.S.W.A., Local 7574; Giordano grievance*, December 5, 1985. Teplitsky — 3 pages. (53)

Fighting with fellow employee — grievor's role in instigation sufficiently proven; five-day suspension upheld. *Re Brant County Board of Education & C.U.P.E., Local 282; Jensen grievance*, January 22, 1986. Barton — 10 pages. (54)†

Insubordination — grievor not rectifying production problem and walking off the job — foreman's evidence held to be more credible; grievance dismissed. *Re Acadian Platers Company Ltd. & U.S.W.A., Local 8059; Jauha grievance*, January 27, 1986. Kennedy — 11 pages. (55)

Lateness — grievor sent home after reporting late for overtime assignment; two-day suspension unreasonable — decision to revoke overtime assignment improper because motivated by disciplinary considerations; grievor to be paid overtime wages minus penalty for lateness; grievance allowed. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Local 112; Kappsis grievance*, January 21, 1986. O'Shea — 17 pages. (56)†

Leaving worksite before end of shift — no notice given or permission asked; sufficient opportunity for both; progressive discipline imposed; five-day suspension reduced to one day. *Re Ralston Purina Canada Inc. & U.A.W., Local 636; Tune grievance*, January 22, 1986. H.D. Brown — 10 pages. (57)

Leaving work station to take early shower — rule known to employee; discipline warranted, but mitigated because no intention to leave work early; grievance allowed in part; 25 demerit points reduced to five. *Re Algoma Steel Corp. Ltd. & U.S.W.A., Local 2251; Kelly grievance*, January 27, 1986. Majority: Black, Forbes; dissent: Woodcock — 7 pages. (58)

Procedure: grievor's right to union representation — no discussion prior to imposition of discipline; company's lack of compliance nullifies the discipline in question; suspension declared null and void. *Re Spar Aerospace Ltd. & U.A.W., Local 112; Brolley grievance*, December 27, 1985. Betcherman — 5 pages. (59)†

Unauthorized absence — company having just cause, but penalty out of proportion to the offence; disciplinary warning substituted for one-month suspension. *Re Fleet Industries of Fleet Aerospace Corp. & I.A.M. Lodge No. 171; Nigh grievance*, January 21, 1986. Brent — 12 pages. (60)

Verbal obscene abuse of supervisor and insubordination alleged — no refusal of work order established; poor relationship between supervisor and grievor; grievor venting frustration; warning substituted for two-day suspension; no evidence of harassment by supervisor; discipline grievance allowed in part; harassment grievance dismissed. *Re Kendall Canada & U.S.W.A., Local 8505; DeFrance grievance*, January 3, 1986. Langille — 14 pages. (61)†

Work performance — grievor not following job priorities; employer having reason to expect employee to follow instructions in specified order; grievance dismissed. *Re Mactac Canada Limited & Canadian Paperworkers, Local 302; Dicks grievance*, January 13, 1986. Baum — 7 pages. (62)

#### Estoppel

Employer agreement to exempt certain employees temporarily from unduly harsh result of new vacation agreement found — union accepted and placed reliance upon understanding; grievance allowed. *Re Royal City Ambulance Service & O.P.S.E.U.; Trilesky grievance*, January 16, 1986. Lerner — 7 pages. (63)

Bus service terminated unilaterally by employer: long-standing practice not creating a legal right to continuation of service; grievance dismissed. *Re Atomic Energy of Canada Limited & Atomic Energy Labour Alliance; union grievance*, January 20, 1986. Majority: Swan, Sanderson; dissent: Gauthier — 20 pages. (64)\*

#### Evidence

Cross-examination: union requesting opportunity to cross-examine employer to establish background of discharge due to absenteeism — denied as not relevant in light of conditional reinstatement agreement. *Re Denison Mines Ltd. & U.S.W.A., Local 5762; Ryan grievance*, January 30, 1986. Freedman — 6 pages. (65)

#### Grievance Procedure

Progressive discipline scheme set-up excluding presence of stewards — second step of scheme held to be part of grievance procedure; grievance allowed in part. *Re Dow Chemical Canada Inc. & E.C.W.U.; policy grievance*, January 22, 1986. Samuels; partial dissents: Filion, Robbins — 24 pages. (66)

Timeliness — failure of union to meet mandatory time limits; grievance not arbitrable. *Re Peterborough Civic Hospital & O.N.A.; Foran grievance*, December 31, 1985. Majority: Burkett, Winkler; dissent: O'Neil — 10 pages. (67)\*

Timeliness — grievance filed late — no reason advanced for delay; grievance inarbitrable. *Re Tracon Engineering Limited & I.B.E.W., Local 2345; Tielve grievance*, December 27, 1985. Gandz — 4 pages. (68)†

Timeliness and union authorization of the grievance — both objections invalid; grievance arbitrable. *Re Carleton Board of Education & Ontario Secondary School Teachers' Federation (District 43); Kelso grievance*, January 17, 1986. Weatherill, Cazabon, White — 9 pages. (69)

#### Holiday Pay

Calculation — during life of current collective agreement the employer is obliged to pay employees eight hours' pay at regular rates for the recognized paid holidays; grievance allowed. *Re Village Green Nursing Home Corporation & S.E.U., Local 183; policy grievance and group grievance*, December 20, 1985. Thorne — 8 pages. (70)†

Day off in lieu requested instead of pay for holiday — request allowable under *Employment Standards Act*; estoppel is not a defence against provisions of a public statute; grievance allowed. *Re Cambridge County Nursing Home & S.E.U., Local 204; Garrett grievance*, January 22, 1986. Saltman, Addario, Ortlieb — 12 pages. (71)

Entitlement to payment of regular wages for Labour Day falling within grievor's vacation period — entitlement established pursuant to *Employment Standards Act* to said wages or day off in lieu; grievance allowed. *Re Orchard Park Tavern & H.E.R.E., Local 280; Casmiri grievance*, January 3, 1986. Betcherman — 5 pages. (72)†

#### Hours of Work

Starting time policy unilaterally changed by employer; union to be given opportunity for input prior to new policy becoming effective; grievance allowed. *Re Beacon Hill Lodges of Canada Ltd. & S.E.U., Local 210; policy grievance*, January 27, 1986. Saltman, Sargeant, McDonald — 12 pages. (73)

#### Job Evaluation

Piece work rate — time study ordered and results corroborating union's position that piece work rates on new machine too low; increase of 9.4% ordered; grievances allowed. *Re Brown Shoe Company of Canada Limited & U.F.C.W.U., Local 1979; McDonald et al grievances*, January 4, 1986. Pyle — 9 pages. (74)†

#### Job Posting

Notice of positions of responsibility — temporary assignment of bargaining unit member to vacant management position; virtually same duties performed by replacement; no creation of a new position; grievance dismissed. *Re Metropolitan Separate School Board & The Ontario English Catholic Teachers' Association; union grievance*, January 30, 1986. Majority: Howe, Filion; dissent: Golden — 23 pages. (75)

Qualifications — Bachelor's degree or equivalent required; reasonable even though present employees not having degree; job evaluation process supports reasonableness; grievance dismissed. *Re Toronto Public Library Board & C.U.P.E., Local 1996; policy grievance*, January 24, 1986. Majority: Kennedy, Budd; dissent: Solberg — 28 pages. (76)

Qualifications — grievor's qualifications for an accounting vacancy did not meet the posted requirements; grievance dismissed. *Re Thunder Bay, Corporation of City of & C.U.P.E., Local 87; Cochrane grievance*, January 16, 1986. Majority: Davis, Holt; dissent: Brazeau — 12 pages. (77)



Qualifications — grievor who is not an applicant for a job vacancy cannot challenge the qualifications attached to the job by the employer; grievance dismissed. *Re Lake Ontario Steel Co. Ltd. & U.S.W.A.; Jenkins grievance*, January 24, 1986. Draper — 4 pages. (78)†

Transfer — no requirement to post transfer of employee from one geographical unit to another of same entity where no change in classification, hourly rate and no vacancy arising as a result; grievance dismissed. *Re Plainfield Children's Home & S.E.U., Local 183; Houle grievance*, January 3, 1986. Emrich — 15 pages. (79)†

#### Job Vacancy

Existence of vacancy — specific programs in specific locations considered to constitute specific vacancies subject to posting; job opening resulting from transfer, required posting; grievance allowed. *Re Niagara, Regional Municipality of & O.N.A.; policy grievance*, January 23, 1986. Joyce — 10 pages. (80)†

#### Lay-Off

Bumping rights — parties agreeing to different standards in respect of promotions and lay-offs; no intention of senior employee bumping up when facing a lay-off; grievance dismissed. *Re Macotta Company of Canada & U.S.W.A.; Gilbert et al grievance*, December 31, 1985. Majority: Burkett, Murray; dissent: Signoretti — 11 pages. (81)\*

Improper lay-off alleged — reduction in hours resulting from transfer to different unit; fewer hours of work per week at said unit expressly defined as regular; no guarantee of hours of work per week; lay-off not established; grievance dismissed. *Re Plainfield Children's Home & S.E.U., Local 183; Houle grievance*, See (79), *supra*. (82)†

Qualifications — grievor not relatively equal in experience to incumbent; grievance dismissed. *Re Conestoga College of Applied Arts and Technology & O.P.S.E.U.; Keating grievance*, January 16, 1986. Shime, Shields, Beaulieu — 3 pages. (83)

Qualifications — grievor possessing seniority, but qualifications not relatively equal; grievance dismissed. *Re Eldorado Resources Limited, Port Hope, Ontario & U.S.W.A., Local 13173; Ormiston grievance*, January 21, 1986. Brent — 5 pages. (84)

Qualifications for recall — grievor president of local; having super-seniority and right to be recalled first during lay-off period provided qualified — grievor possessing qualifications; grievance allowed. *Re Dresser Canada Inc., Cambridge (Galt) Plant & U.S.W.A., Local 5475; Myers grievance*, January 20, 1986. Samuels — 4 pages. (85)

Re-assignment of cleaning duties — disbursement of cleaning functions; does not constitute a violation of the collective agreement; contingent employees not considered as students; grievance dismissed. *Re Simpsons Ltd. & United Brewery Workers, Local 530; Sutaroski and Fitzgerald grievance*, January 29, 1986. Devlin — 12 pages. (86)†

Reduction in business at new store causing lay-off of surplus employees — no evidence that conclusion reached that employee surplus made in bad faith, discriminatory or arbitrary; grievance dismissed. *Re New Dominion Stores Inc. & U.S.W.A., Local 14045; policy grievance*, January 8, 1986. Hinnegan — 10 pages. (87)†

Temporary lay-off provision used by employer — one shift upon return from annual vacation shut-down period at issue; employees used necessary to start up machines; grievances dismissed. *Re Long Manufacturing Ltd. & I.A.M., Local 2330; Crane et al grievances*, January 15, 1986. Majority: Swan, Davies; dissent: Solberg — 8 pages. (88)

#### Overtime

Calculation where statutory holiday — change in work assignment and hours of work posted and constituting regular work week period of forty hours for week in question — thus eight hours of statutory holiday falling within period not to be included in calculation of overtime; grievance dismissed. *Re Domtar Inc. & Canadian Paperworkers, Locals 212 and 338; group grievance*, January 6, 1986. Majority: Brunner, O'Shea; dissent: Paxton — 8 pages. (89)

Entitlement — junior employee with higher classification does work grievor should have done; work improperly taken from grievor; grievance allowed. *Re Hamilton, Corporation of City of & C.U.P.E., Local 5; Aquino grievance*, January 28, 1986. Weatherill — 7 pages. (90)

#### Pension Plan

Surviving spouse benefits — "C" pension plan amendment forming a part of current collective agreement; issue in dispute should be referred to appropriate Board of Administration. *Re De Havilland Aircraft of Canada Limited & U.A.W., Local 112; policy grievance*, January 17, 1986. T.A. Jolliffe — 20 pages. (91)†

#### Probationary Employees

Calculation of probationary period — commencing "after the date of hire" meaning following the first day at work; probationary period not completed at time of termination — no substantive right to contest discharge conferred by collective agreement; grievance dismissed. *Re Boots Drug Stores (Canada) Ltd. & E.C.W.U., Local 8; group grievance*, January 2, 1986. Kruger — 7 pages. (92)†

#### Procedure

Issue estoppel — subsequent individual grievance protesting transfer not estopped by prior withdrawal of policy grievance concerning propriety of transfers where withdrawal made without prejudice to union's right to file a grievance on similar matters in future; grievance arbitrable. *Re Plainfield Children's Home & S.E.U., Local 183; Houle grievance*, January 3, 1986. See (79, 82) *supra*. (93)

#### Promotion

Qualifications — aptitude test used as part of selection procedure not meeting standard of reasonableness; not relevant to position sought nor were results a current measure; failure to ascertain or assess grievor's qualifications and skills; remittance back to employer; grievance allowed. *Re Domtar Inc. & U.E., Local 561; Freamo grievance*, January 3, 1986. Solomatenko — 14 pages. (94)\*†

Qualifications — experience in job area demanded; restriction reasonable to achieve competence within reasonable familiarization period; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 1915; Kanzenbach grievance*, January 24, 1986. Barton — 8 pages. (95)

Qualifications — grievor did not set out qualifications in much detail in application; employer should have interviewed grievor in light of his seniority; grievance allowed, grievor awarded position. *Re Domtar Fine Papers Ltd. & Canadian Paperworkers, Local 212; Gagne grievance*, January 17, 1986. Majority: Weatherill, Paxton; dissent: O'Shea — 13 pages. (96)

Qualifications — grievor not possessing demonstrated knowledge of theory; learner period not for purpose of learning theory; grievance dismissed. *Re Edward, A Unit of General Signal Limited & U.S.W.A.; Deacon grievance*, January 13, 1986. Brent — 6 pages. (97)

**Qualifications** — neither grievor nor incumbent had required qualifications; management rights supercede despite grievor's seniority; grievance dismissed. *Re Boots Drug Stores (Canada) Ltd. & U.F.C.W.U., Local 206; Carter grievance*, January 28, 1986. Majority: Samuels, Addario; dissent: Rudrum — 9 pages. (98)

**Remedy** where position improperly awarded — responsibility of both grievor and employer to ensure adequate information is obtained upon which to make selection in accordance with collective agreement; position awarded to grievor. *Re Belleville General Hospital & O.N.A.; Paul grievance*, January 3, 1986. Thorne — 14 pages. (99)\*†

#### Recall

**Qualifications** — grievor not qualified for position without benefit of training period; grievance dismissed. *Re Byron Jackson Division, Borg Warner (Canada) Limited & I.A.M., Local 235; Rosmo grievance*, January 21, 1986. Burkett — 15 pages. (100)

#### Scheduling of Work

**Shift scheduling** — unilateral decision by company; company did not exercise its rights in a "fair and reasonable manner"; grievance allowed. *Re Lear Siegler Industries Ltd. & U.A.W., Local 1524; policy grievance*, January 13, 1986. Gandz — 9 pages. (101)†

#### Seniority

**Calculation** — company reorganization causing closure of division and redistribution of work among existing bargaining units at new location; transfer into jobs governed by job posting provisions of three relevant collective agreements; no recognition of full company seniority on transfer to different bargaining unit; grievance allowed. *Re Loeb Inc. & Teamsters, Local 91; policy grievance*, December 30, 1985. Thorne — 49 pages. (102)†

**Lateral transfer** — seniority not applicable; grievance dismissed. *Re Shopsy's Foods, a Division of Unox Ltd. & U.F.C.W.U., Local 175; Doyle & Bianchi grievance*, January 27, 1986. Boscarior — 6 pages. (103)†

#### Sick Leave

**Credits and entitlement** of part-time employees to be determined on the basis of continuous service, not seniority; grievance allowed. *Re Hastings, Corporation of County of & C.U.P.E., Local 1133; union grievance*, January 20, 1986. Draper — 6 pages. (104)†

**Substitution** of sick leave for vacation leave when illness coinciding with his scheduled vacation — no prior agreement to make the change; grievance dismissed. *Re Lady Minto Hospital & C.U.P.E., Local 238; McNab grievance*, January 28, 1986. Joyce — 15 pages. (105)†

#### Transfer

**Right to refuse transfer** — transfers not involving relocation or within same metropolitan area can be refused without showing good and sufficient reason; grievance allowed. *Re Miracle Food Mart Steinberg Inc. & U.F.C.W., Locals 175 and 633; Joyce grievance*, January 8, 1986. Hinnegan — 8 pages. (106)†

#### Vacations

**Scheduling** — unexpected reluctance of employees to accept vacation being scheduled during shut-down not constituting proper reason for short notice; grievance allowed. *Re Victoria Hospital Corp. & London and District Service Workers, Local 220; group grievance*, January 7, 1986. Majority: Brent, Solberg; dissent: Jones — 18 pages. (107)

#### Wages

**Entitlement** of company to pay more than the job rate in one classification — company not forced to raise wages in all other classifications; grievance dismissed. *Re Johnson-Matthey Ltd. & U.S.W.A., Local 9046; policy grievance*, January 20, 1986. E.B. Jolliffe — 22 pages. (108)\*†

**Rate** — employee entitled as "full salary" to rate of higher classification if evidence establishes that employee would have performed the duties of higher classification but for intervening compensable accident; grievance allowed. *Re Nepean, Corp. of City of & Int'l. Assoc. of Fire Fighters, Local 1487; association grievance*, January 6, 1986. Brunner — 10 pages. (109)

**Retroactive compensation** — to be calculated on daily shift of eight hours; grievance allowed. *Re Sidbrook Private Hospital & O.N.A.; policy grievance*, January 21, 1986. Emrich — 16 pages. (110)†

**Salary adjustments** — collective agreement ambiguous; change in past practice shown in keeping with new collective agreement; no obligation to pay increase before review; grievance dismissed. *Re Inco Metals Co. & Canadian Guards' Association, Local 105; Watts grievance*, January, 1986. Majority: Simmons, Piggott; dissent: Leore — 15 pages. (111)

**Special rate** where periodically required to work at another trade requiring skills at level equal to or greater than own trade — requirement to exercise a trade listed in building mechanic occupational definition which is other than primary trade at a level greater than a moderate skill level not creating entitlement to higher rate of pay; grievance dismissed. *Re Ontario Hydro & Ontario Hydro Employees; NT-198 grievance*, January 9, 1986. Majority: P. Picher, Cowan; dissent: Vincer — 27 pages. (112)

**Temporary assignment** to non-bargaining unit position — collective agreement does not cover non-bargaining unit wages; Board has no jurisdiction; grievance dismissed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Joubarne grievance*, January 27, 1986. Majority: Brent, Hines; dissent: McDonald — 12 pages. (113)

#### Welfare Plans

**O.H.I.P. coverage** — request for coverage of eligible dependents — employer obligated to provide employees only with O.H.I.P. coverage; grievance dismissed. *Re Northern Telecom Canada Limited & U.A.W., Local 27; union grievance*, January 13, 1986. Samuels — 4 pages. (114)

#### Work Assignment

**Change of policy** — labourer no longer sent out with subforeman to post signs; company's right to do so not restricted by collective agreement; grievance dismissed. *Re Timmins, Corporation of City & C.U.P.E., Local 210; Melanson grievance*, December 19, 1985. Wilson — 6 pages. (115)†

**Discrimination alleged** — grievor moved from position because of lack of ability to speak French; employer showing legitimate business need for nursing capability in the French language on a daily basis; grievance dismissed. *Re Cornwall General Hospital & O.N.A.; MacIntosh grievance*, January 21, 1986. Majority: Burkett, Redford; dissent: Switzman — 17 pages. (116)\*

**Discrimination alleged** in scheduling based on union activity — no evidence to ground discrimination; grievance dismissed. *Re Fanshawe College & O.P.S.E.U.; Lovelock grievance*, January 23, 1986. Majority: Brent, Hoddle; dissent: Herbert — 8 pages. (117)



Entitlement — company properly construed grievor's omission to sign "Saturday worklist" as waiver of his right to be called for trip commencing Good Friday night and ending on Sunday; grievance dismissed. *Re Hutton Transport Limited & Teamsters, Local 938; Lynch grievance*, December 24, 1985. Majority: Mitchnick, Sergeant; dissent: McRae — 11 pages. (118)

Inequitable workload alleged — not found on the basis of the evidence; grievance dismissed. *Re Fanshawe College & O.P.S.E.U.; Bieman grievance*, January 24, 1986. Majority: H.D. Brown, Koski; dissent: Ziemba — 21 pages. (119)

Manager prohibited from performing bargaining unit work unless in operation of four employees or less — retail operation distinct from wholesale operation notwithstanding being housed in same building and frequent, unimpeded transfer of employees between both operations — prohibition not effective; grievance dismissed. *Re Brewers' Warehousing Company Limited & United Brewers' Warehousing Workers; policy grievance*, January 9, 1986. Knopf — 15 pages. (120)†

New machine giving rise to dispute between two locals — work required substantially similar to work already being done; falls within established line of demarcation; collective agreement considered; grievance allowed. *Re St. Mary's Paper Inc. & Canadian Paperworkers, Local 67; policy grievance*, January 28, 1986. Majority: Devlin, Paxton; dissent: Dixon — 14 pages. (121)

Teaching assignment — within management rights; good faith and legitimate management purpose found; not disciplinary; grievance dismissed. *Re Lambton County Board of Education & Ontario Secondary School Teachers' Federation, Dist. 3; Levesque grievance*, January 24, 1986. Samuels, Riddell, McNeil — 16 pages. (122)

Unilateral transfer by employer over teacher's objection — past practice showed that objections did not cancel transfer; grievance dismissed. *Re Etobicoke Board of Education & Ontario Secondary School Teachers' Federation (District 12); policy grievance*, January 15, 1986. Majority: McKechnie, Riddell; dissent: Posen — 16 pages. (123)

Infringement of bargaining unit work alleged — job descriptions in collective agreement clear; infringement by supervisors found; grievance allowed. *Re V/S Services Ltd. & Workers' Union of Queen Elizabeth Hospital; policy grievance*, October 18, 1985. H.D. Brown — 28 pages. (124)

## Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration during the month of August, 1985.

### Collection

Failure to pay amounts owing under collective agreement — amounts paid prior to existence of collective agreement not to be considered — order to pay issued; grievance allowed. *Re Trident Holdings Ltd., c.o.b. as Trident Electric & I.B.E.W., Local 353; union grievance*, July 24, 1985. Freedman, Stamp, O'Flynn — 4 pages. (125)

Failure to pay wages and benefits — employer not present at hearing; order to pay issued. *Re Amphitron Construction Limited & United Brotherhood of Carpenters and Joiners, Local 1190; union grievance*, June 28, 1985. Howe, Grant, Armstrong — 3 pages. (126)

Failure to pay dues and benefits — employer not present at hearing; order to pay issued. *Re Falls Masonry Contractors & Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen, Local 4; union grievance*, July 8, 1985. Franks, Swenson, O'Flynn — 2 pages. (127)

Receiver manager bound by collective agreement — failure to pay dues and benefits; employer not present at hearing; order to pay issued. *Re Border Cities Wire and Iron Limited & Int'l. Association of Bridge, Structural and Ornamental Ironworkers, Local 700; union grievance*, July 8, 1985. Franks, Wilson, Kobryn — 10 pages. (128)

Receiver manager bound by collective agreement — failure to pay wages and benefits; employer not present at hearing; order to pay issued. *Re Glenlin Mechanical Inc. & Sheet Metal Workers, Local 47; union grievance*, July 30, 1985. Freedman, Burnet, Armstrong — 2 pages. (129)

### Collective Agreement

Related employer application — order made according to settlement between the parties. *Re Olivieri Masonry Limited, Ottawa-Carleton Bricklaying and Masonry Limited, and Olivieri Forming Ltd. & United Brotherhood of Carpenters and Joiners, Local 1030; union grievance*, July 3, 1985. Satterfield, Murray, Rutherford — 15 pages. (130)

### Contracting Out

Bargaining unit work performed by union workers belonging to a different local — requisite permission not given — damages awarded; grievance allowed. *Re Etco Steel Etco Steel Tank Erectors Ltd. (411150 Ontario Limited) & Int'l. Association of Bridge, Structural and Ornamental Ironworkers, Local 700; union grievance*, July 22, 1985. Franks, Murray, Grasso — 2 pages. (131)

### Discharge

Assault on fellow employees alleged — proven in part; unequal application of discipline; reinstatement without compensation ordered; grievance allowed in part. *Re Tra-Wall Group Limited & Labourers, Local 183; Desroches grievance*, July 29, 1985. Franks, Eayrs, Ballentine — 5 pages. (132)

### Overtime

Establishment of regular shift — shift not determined in advance; overtime payable; grievance allowed in part. *Re Ontario Hydro & Int'l. Association of Bridge, Structural and Ornamental Ironworkers; union grievance*, July 26, 1985. Majority: Franks, Rutherford; dissent: Gallivan — 7 pages. (133)

### Procedure

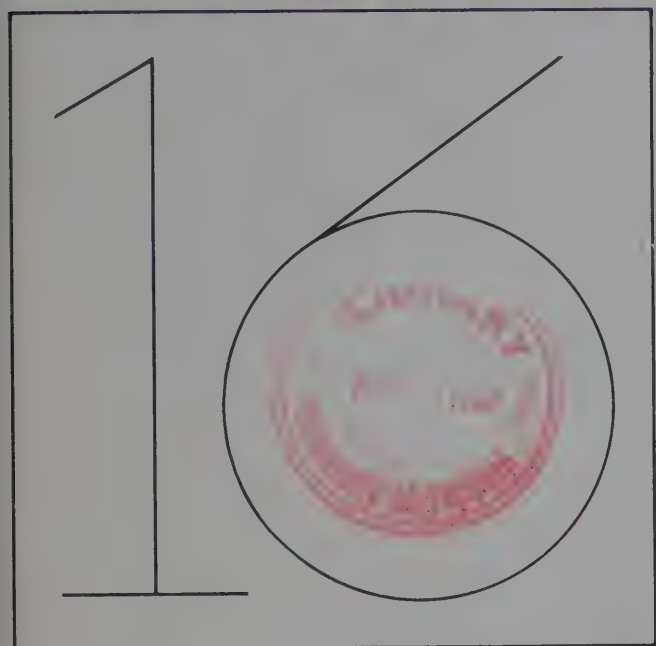
Adjournment requested by employer — adjournments not granted on basis of convenience to one party; request refused. *Re West York Construction Limited and West York Construction (1984) Limited & Int'l. Union of Bricklayers and Allied Craftsmen, Local 2; union grievance*, July 8, 1985. Howe, Grant, Armstrong — 16 pages. (134)

### Related Employer

Related general contractors — related business used to avoid provision of Provincial Agreement; declaration granted; damages awarded; grievance allowed. *Re West York Construction Limited, and West York Construction (1984) Limited & Int'l. Union of Bricklayers and Allied Craftsmen, Local 2; union grievance*. See (134), *supra*. (135)

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# Monthly Bulletin



Ontario Ministry of Labour

Hon. William M. Wrye, Minister  
T.E. Armstrong, QC, Deputy Minister

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Miss Jean M. Read, Director

May, 1986  
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Office of Arbitration as a service to  
persons involved in labour-management  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1981, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Arbitrators

*Donald L. Black*

Mr. Donald L. Black has advised that he will no longer be available for arbitrations.

*Sidney B. Linden*

Mr. Sidney B. Linden has been appointed as Executive Director of the Canadian Auto Workers (C.A.W.) Canadian Legal Services Plan, and will therefore be unavailable for arbitration during this time.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of February, 1986. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.



**Arbitrability**

Eligibility requirements for weekly indemnity payments — matter arbitrable. *Re Carling O'Keefe Breweries Ontario Ltd. & Brewery, Malt and Soft Drink Workers, Loc. 325; Biggar grievance*, February 4, 1986. Burkett — 17 pages. (1)

Harassment: conspiracy to force grievor to quit job alleged — not covered by collective agreement; grievance dismissed. *Re Ramada Hotel (Don Valley) & Hotel Employees, Restaurant Employees, Loc. 75; Copkov grievance*, February 11, 1986. Barrett — 13 pages. (2)†

Retired employees; collective agreement implies prospective rights — parties capable of negotiating such rights; jurisdiction found; grievance arbitrable. *Re Allen Industries Canada Ltd. & U.A.W.; union grievance*, February 20, 1986. H.D. Brown — 34 pages. (3)\*

Timeliness of s.45 application — not made within arbitration submission time limit in collective agreement; previous arbitration submission by other party of no consequence; no jurisdiction found. *Re McDonnell Douglas Canada Ltd. & U.A.W., Loc. 1967; Wright grievance*, February 13, 1986. Barton — 11 pages (4)†

Res judicata — grievances not covered in previous award; grievance arbitrable. *Re Northern Telecom Canada Limited & U.A.W., Loc. 1915; Manuel grievance*, February 11, 1986. Dunn — 8 pages. (5)

**Bargaining Unit**

Building centre manager — duties not falling within managerial job description; dues to be remitted to union; grievance allowed. *Re North American Lumber Limited & U.F.C.W.U., Loc. 409; union grievance*, February 6, 1986. Boscaroli — 5 pages. (6)†

Qualitative changes in job functions; now supervisors with increased responsibility and within management — outside the bargaining unit; grievance dismissed. *Re The Porcupine and District Children's Aid Society & C.U.P.E. Loc. 2196; union grievance*, February 6, 1986. Dunn — 14 pages. (7)

Reclassification — duties and responsibilities of reclassified employees do not fall within the classifications included in the bargaining unit; employee properly excluded; grievance dismissed. *Re Laurentian Hospital & C.U.P.E., Loc. 161; policy grievance*, February 24, 1986. H.D. Brown — 16 pages. (8)

**Bereavement Leave**

Extent of entitlement — provision for a minimum of three days; rescheduling of lieu day to give three days is violation; grievances allowed. *Re Golden Manor, City of Timmins Home for the Aged & C.U.P.E., Loc. 1140; Whissel grievances*, February 19, 1986. Dunn — 4 pages. (9)

**Classification**

Freedom to act independently on the job — grievor ultimately supervised in all duties; collective agreement considered; management's classification correct; grievance dismissed. *Re Algonquin College & O.P.S.E.U.; Rousseau grievance*, February 20, 1986. Majority: H.D. Brown, Cochrane; unsigned: Gray — 16 pages. (10)

Higher classification claimed — grievors failed to prove they had the training, knowledge and abilities of those workers who fall into a higher wage classification; grievance dismissed. *Re Bell Canada & Communication workers; Klyne and others grievance*, February 7, 1986. Majority: M. Picher, Gilfillan; dissent: Beaulieu — 20 pages. (11)

Lead hand designation and pay unilaterally removed by company — duties remained the same, premium pay based on seniority cannot be unilaterally removed by company; grievance allowed. *Re Hilroy Ltd., a Division of Abitibi-Price Inc. & Canadian Paperworkers, Loc. 1144; group grievance*, January 31, 1986. Barrett — 13 pages. (12)†

Skilled job arbitrarily changed to semi-skilled — insufficient grounds; timeliness not a bar here; grievance allowed. *Re Winchester Cheese Inc. & R.W.D.S.U., Loc. 440; Crowder grievance*, January 28, 1986. Majority: Emrich, Reilly; dissent: Furlong — 33 pages. (13)

**Contracting Out**

Independent contractors hired by Town to clear roads when necessary — operators of equipment not employees of the Town; grievance dismissed. *Re Cobourg, Municipal Corporation of the Town of & C.U.P.E., Loc. 25; union policy grievance*, February 5, 1986. Brunner, Rogers, Hodges — 20 pages. (14)

Laid off employees claim right to work — not work normally performed by bargaining unit, but practicable here to have used laid off employees; lay-off lessens practicability standard; no estoppel; grievance allowed. *Re Algoma Steel Corp. & U.S.W.A., Loc. 2251; group grievance*, February 21, 1986. Majority: Devlin, Woodcock; dissent: Forbes — 20 pages. (15)

Repair work assigned to non-bargaining unit group — no prior consideration of bargaining unit department — violation found; grievance allowed, overtime compensation ordered. *Re Dow Chemical Canada Inc. & E.C.W.U., Loc. 672; group grievance*, January 27, 1986. Hunter — 13 pages. (16)†

**Demotion**

Disciplinary as well as non-disciplinary factors — failure to show cause for discipline; reinstatement granted; grievance allowed. *Re Robert Hunt Corp. & United Brotherhood of Carpenters and Joiners, Loc. 3054; Masciotra grievance*, January 31, 1986. Majority: Knopf, Pellettier; dissent: Baldwin — 14 pages. (17)

Failure to pass qualifying test, personal problems a factor — company obligated to provide another opportunity to qualify; grievance allowed. *Re Atomic Energy of Canada Limited & Int'l. Association of Firefighters, Loc. F-4; Harrington grievance*, January 31, 1986. Majority: Burkett, Hastings; dissent: Robertson — 18 pages. (18)

**Discharge**

Absence for three consecutive work days without reporting — grievor having reported once — insufficient grounds for dismissal; grievor reinstated without compensation. *Re Clark Equipment of Canada Ltd. & I.A.M., Loc. 2183; Hill grievance*, January 22, 1986. Teplitsky — 12 pages. (19)\*

Absence without leave — loss of seniority not terminating employment; grievance allowed. *Re Timberjack Inc. & Int'l. Moulders and Allied Workers, Loc. 246; Harbour grievance*, January 31, 1986. Houston — 12 pages. (20)†

Absenteeism and working elsewhere while claiming sick leave — only written warning previously, but poor attitude and lack of remorse preclude variance; discharge upheld. *Re Pitman Manufacturing Co. Ltd. & U.A.W., Loc. 303; Rampsand grievance*, February 18, 1986. Joyce — 6 pages. (21)†

Absenteeism due to illness — reasonable likelihood of regular attendance in future; grievance allowed. *Re Canada Post Corporation & CUPW; Gervais grievance*, February 13, 1986. P. Picher — 17 pages. (22)

Absenteeism — grievor suffering from chronic medical problems resulting in absenteeism far exceeding the plant average — future attendance not guaranteed; no right to terminate grievor while on sickness and accident benefits; grievor to be reinstated as employee from time of discharge and compensated for benefits for one year; parties to work out arrangements after that time. *Re Northern Telecom Canada Limited & Communications Workers; Berube grievance*, February 4, 1986. Burkett — 24 pages. (23)

Attitude problem — no other recourse except discharge; grievance dismissed. *Re Canron Inc. Ingot Mould Foundry, Hamilton, Ontario & U.S.W.A., Loc. 2940; Miller grievance*, February 17, 1986. O'Shea — 14 pages. (24)

Dishonesty — improper receipt of indemnity, workers' compensation and sick leave benefits — just cause for discharge not established but grievor not candid with employer; three-month suspension substituted. *Re Central Park Lodges of Canada & London and District Service Workers, Loc. 220; Skyers grievance*, February 10, 1986. Majority: Devlin, St. Pierre; dissent: Herbert — 19 pages. (25)

Falsification of time card entries — no explanation forthcoming. First grievor showed no remorse; grievance dismissed. Second grievor showed remorse; grievance allowed in part, reinstatement without compensation and without seniority for period of discharge. *Re Stelco Inc., Burlington Works (C.R.P.P.) & U.S.W.A., Loc. 8460; Nelson and Sigvaldason grievances*, January 29, 1986. Lerner — 14 pages. (26)†

Fraudulent punching of time card arranged by grievor — arranging not conclusively proven, but grievor aware of being dishonest; substantial suspension substituted. *Re CVL Products Limited & U.A.W., Loc. 199; Sam grievance*, February 10, 1986. Weatherill — 6 pages. (27)

Inability to perform duties — job discontinued; grievor was unable to meet job requirements of alternate job; no work in bargaining unit for which grievor qualified; grievance dismissed. *Re Bell Canada & Communications Workers; Berry grievance*, February 17, 1986. Majority: Devlin, Filion; dissent: Beaulieu — 15 pages. (28)

Insubordination and damage to company property — grievor denying involvement and therefore not contrite; company should not risk return of employee; grievance dismissed. *Re Snap-On Tools of Canada Ltd. & U.S.W.A., Loc. 5483; Bronfman grievance*, February 12, 1986. Barton — 11 pages. (29)

Lateness — shift starting time changed to 3:00 a.m. — grievor having difficulty in adjusting to new starting time — difficulties understandable; conditional reinstatement. *Re The Globe and Mail & The Southern Ontario Newspaper Guild; Doan grievance*, February 3, 1986. McLaren — 20 pages. (30)

Sabotage — alleged tire greasing — grievor deliberately tried to destroy company property; grievance dismissed. *Re Uniroyal Ltd. & United Rubber Workers, Loc. 80; Sirju grievance*, February 24, 1986. Barton — 24 pages. (31)†

Sleeping on the job — evidence established that grievor actually ill and unconscious; grievance allowed; reinstatement upon medical certification. *Re Jamesway Co. & Int'l. Moulders and Allied Workers, Loc. 194; MacMillan grievance*, February 12, 1986. Samuels — 4 pages. (32)

Theft — grievor did not pay for a carton of cigarettes; no mitigation due to absence of a prompt and frank acknowledgement; grievance dismissed. *Re Oshawa Foods & U.F.C.W.U., Loc. 206; Vlaho grievance*, February 25, 1986. Boscaroli — 5 pages. (33)†

Theft; misappropriation of company property — grievor's actions not that of a common thief — induced by alcoholism. Since discharge grievor has taken steps to rehabilitation — conditional reinstatement without compensation. *Re Bell Canada & Communications Workers; Cowell grievance*, January 31, 1986. M. Picher — 13 pages. (34)

### Discipline

Failure to follow check-in system — check-in system critical for safety in mining when engaging in underground blasting — penalty varied to verbal from written warning; grievance allowed in part. *Re Denison Mines Limited & U.S.W.A., Loc. 5762; McDooling grievance*, February 14, 1986. MacDowell — 17 pages. (35)

Failure to report with tools alleged — no violation by grievors of city policy; to be compensated for loss of wages and benefits; grievance allowed. *Re Timmins, Corporation of the City of & C.U.P.E., Loc. 210; Poirier, Villeneuve and Boissonneault grievance*, February 7, 1986. Wilson — 5 pages. (36)†

Failure to report to work early for set-up — suspension found to be valid; denial of shift preference found to be excessive; grievance allowed in part, compensation ordered for shift denial. *Re Webster Manufacturing & Int'l. Moulders and Allied Workers; Cookson grievance*, February 6, 1986. Burkett — 15 pages. (37)

Insubordination — grievor's evidence contradictory — incident proven; lack of remorse and no explanation given; two-day suspension not unreasonable; grievance dismissed. *Re Kitchener, Corporation of the City of & C.U.P.E., Loc. 68; Asevedo grievance*, February 17, 1986. Solomatenko — 13 page. (38)†

Insubordination — refusing to comply with a direct order from authority — suspension of three days upheld; grievance dismissed. *Re Direct Transportation System Limited & Teamsters, Loc. 938; Huntington grievance*, February 19, 1986. Brent — 6 pages. (39)

Insubordination — union steward involved in altercation with foreman over grievance handling; conduct not attracting discipline because it was in course of official duties as steward; grievance allowed. *Re Gulf Canada Products Co., Clarkson Refinery & E.C.W.U., Loc. 593; Clarke grievance*, February 18, 1986. MacDowell — 24 pages. (40)

Late for overtime assignment — grievor not allowed to work; company action held to be discipline and violated requirement for steward; grievance allowed. *Re DeHavilland Aircraft of Canada & U.A.W., Loc. 112; Kappsis grievance*, January 21, 1986. O'Shea — 17 pages. (41)†



Leaving work improperly — employer did not meet onus to disprove grievor's explanation, procedures not applicable if shift had not yet started; grievance allowed; compensation order for suspension. *Re Christie Brown and Co. & Bakery, Confectionery and Tobacco Workers Int'l., Loc. 426; Mullin grievance*, January 31, 1986. Wilson — 5 pages. (42)†

Negligence — grievor's explanation of equipment malfunction not accepted; grievance dismissed. *Re Labatt's Ontario Breweries & United Brewery Workers, Loc. 304; Jeffers grievance*, January 21, 1986. M. Picher — 12 pages. (43)

Negligence in handling truck — three-day suspension not unreasonable; grievance dismissed. *Re Denison Mines Limited & U.S.W.A., Loc. 5762; Collett grievance*. See (35), *supra*. (44)

Negligent in performing duties — previous incidents, grievor not credible; no evidence of campaign to harass or intimidate; grievance dismissed. *Re Inglebrook Nursing Home Ltd. & H.O.P.E., Loc. 1976; Gardiner grievance*, February 4, 1986. Lerner — 9 pages. (45)†

Procedure: grievor did not have representation or notification of her right to it at the time suspension imposed; discipline imposed was a nullity. *Re Ottawa Civic Hospital & O.N.A.; Kletter grievance*, February 21, 1986. Thorne — 49 pages. (46)†

Unauthorized entering of private premises and unauthorized absence — single witness identification weak; insufficient to prove first allegation; second allegation proven; past practice evidence not on point; grievance partially allowed. *Re University of Ottawa & I.U.O.E., Loc. 796-B; union grievance*, February 14, 1986. Kuttner — 35 pages. (47)†

Unsafe driving — grievor alleged to have struck a pedestrian — penalty imposed too severe; thirty-day suspension reduced to five days. *Re Scarborough Public Utilities Commission & Utility Workers; Nash grievance*, December 23, 1985. Eaton — 32 pages. (48)†

### Employment Status

Employee declared surplus — board refused his request to supply teach — collective agreement violated by employer; grievance allowed. *Re Temiskaming Board of Education & Branch Affiliates of O.S.S.T.F. and A.E.F.O.; Nagy grievance*, October 30, 1985. Marcotte — 12 pages. (49)

Part-time employees: consideration for full-time position — grievor not entitled to position automatically; adequate consideration given; legitimate operational reasons for not promoting; grievance dismissed. *Re Confederation College of Applied Arts and Technology & O.P.S.E.U.; Seniuk grievance*, February 20, 1986. Majority: H.D. Brown, Courtney; dissent: McVey — 37 pages (50)

### Evidence

Access to letters of reference pertaining to tenure application of grievor — some of documents privileged; collective agreement providing that grievor not to have access to any of the letters of reference. *Re York University & York University Faculty Association; Holmes grievance*, February 10, 1986. Majority: Brent; partial dissent: Yeates; dissent: Fekete — 51 pages. (51)

Admissibility of expert evidence — finding that witness is qualified as an expert and also that her area of expertise may be relevant to the board's consideration of the grievance; employer's objection dismissed. *Re Seneca College & O.P.S.E.U.; group grievance*, January 29, 1986. H.D. Brown, Marszewski, Gray — 21 pages. (52)\*

Cross-examination of own witness — union not allowed to cross-examine its own witness because he is not established as hostile. *Re Seneca College & O.P.S.E.U., group grievance*. See (52), *supra*. (53)

Extrinsic evidence to establish meaning of "union dues" — union constitution and by-laws to be produced as proper and relevant evidence. *Re Sudbury Memorial Hospital & C.U.P.E., Loc. 161; policy grievance*, February 24, 1986. Betcherman — 7 pages. (54)†

Proof of prior misconduct of grievor — violation of collateral facts rule; evidence not admissible. *Re Zehrs Markets & Retails Clerks Union, Loc. 1977; Carson and Taylor grievances*, February 18, 1986. Weatherill — 7 pages. (55)\*

### Grievance Procedure

Timeliness — prejudice not established by employer because on notice that dissatisfaction with job posting procedure. *Re Ingersoll Machine and Tool Co. Ltd. & U.S.W.A., Loc. 2918; McKim grievance*, January 29, 1986. Saltman — 16 pages. (56)

Timeliness: referral to arbitration outside time limits — no explanation offered by union; grievance dismissed. *Re Golden Manor, City of Timmins Home for the Aged & C.U.P.E., Loc. 1140; Ansara grievance*, February 20, 1986. Dunn — 5 pages. (57)

Timeliness — union inexperienced; time limits extended. *Re Winchester Cheese Inc. & R.W.D.S.U., Loc. 440; Crowder grievance*. See (13), *supra*. (58)

### Holiday Pay

Entitlement of part-time nurses to holiday pay for holidays which they did not work — collective agreement indicates that compensation is required over and above allowance in lieu of fringe benefits; grievance allowed. *Re Trenton Memorial Hospital & O.N.A.; group grievance*, February 18, 1986. Thorne — 21 pages. (59)

### Hours of Work

Lunch break — entitlement to be relieved from supervision for entire lunch break; grievance allowed. *Re Sudbury District Roman Catholic Separate School Board & Branch Affiliates of The Ontario English Catholic Teachers Association; union grievance*, February 6, 1986. Knopf — 16 pages. (60)

### Illness

Entitlement to wages for first three days of sickness — not contemplated in collective agreement; grievance dismissed. *Re Consumers Glass Company Limited & Draftsmen Association of Ontario, Loc. 164; Schiegl grievance*, February 3, 1986. Brunner — 7 pages. (61)

**Interest Arbitration**

Promotions and transfers; contracting out; unilingual rights; mileage allowance; part-time issues. *Re Ottawa-Carleton, Regional Municipality of and Ottawa, Corporation of City of & Ottawa-Carleton Public Employees, Loc. 503 C.U.P.E.*; February 20, 1986. H.D. Brown; partial dissent: Yeo; addendum: Switzman — 22 pages. (62)

**Job Evaluation**

Change of duties alleged — substantial change; weapons policy requires an elevated exercise in discretion and training; grievance allowed. *Re Atomic Energy of Canada Limited & Teamsters, Loc. 91; upgrade the guard protective services classification grievance*, February 14, 1986. P. Picher, Healy, Shelkie — 34 pages. (63)

**Job Posting**

Experience qualification posted as necessary but not followed — posting unfairly misleads; management must adhere to prerequisites it posts; grievance allowed. *Re Ottawa Board of Education & Ottawa Board of Education Employees; policy grievance*, February 17, 1986. Foisy — 8 pages. (64)†

Requirement of consultation with union; mandatory procedure not followed — remitted to the parties for discussion. *Re Ingersoll Machine and Tool Company Ltd. & U.S.W.A., Loc. 2918; McKim grievance*. See (56), *supra* (65)

**Job Vacancy**

Existence of vacancy; alleged failure of employer to post notices of vacated positions within bargaining unit — no vacancy due to more realignment of work force; grievance dismissed. *Re Kanata, Corporation of the City of & C.U.P.E., Loc. 1670; policy grievance*, February 10, 1986. Roach — 12 pages. (66)†

Overtime assigned — not adequate to establish vacancy; grievance dismissed. *Re Long Manufacturing Ltd. & I.A.M., Loc. 2330; Smith grievance*, January 28, 1986. McLaren, Wace, Solberg — 7 pages. (67)

**Jury Pay**

Compensation for shift not worked — grievors entitled to a day's pay for their attendance at court although court hearings lasted half a day — collective agreement ambiguity to be resolved in favour of union due to past practice; grievance allowed. *Re Loeb Inc. & Warehousemen, Transportation and General Workers, Loc. 715; group grievance*, February 17, 1986. Houston — 7 pages. (68)†

**Lay-Off**

Extent of bumping rights — not extending beyond classification; grievance dismissed. *Re Talisman Motor Inn & Hotels, Clubs, Restaurants and Tavern Employees, Loc. 261; Sterline grievance*, February 9, 1986. Carrothers — 13 pages. (69)†

No permanently classified employee to be laid off during maintenance and clean-up period — employer in breach of collective agreement; grievance allowed. *Re Photo Engravers and Electrotypers Ltd. & Paperhandlers and Pressmen; union grievance*, February 19, 1986. Majority: Swan, Bern; dissent: Reeve — 12 pages. (70)

Notice — grievors sent home early due to insufficient production by temporary employee — management within its rights to organize staffing but failing to provide notice of lay-off; grievors to receive payment in lieu of notice. *Re Great Northern Apparel Inc. & Amalgamated Clothing and Textile Workers, Loc. 1136; Bridson and Whitteker grievance*, February 11, 1986. Frankel — 16 pages. (71)

Qualifications — grievor qualified with familiarization period; remedy conditional upon claim of more senior grievor; grievance allowed. *Re Inco Ltd. & U.S.W.A.; Dupuis grievance*, January 31, 1986. Majority: Weatherill, Farrell; dissent: Keenan — 13 pages. (72)

Senior employee laid off — earlier acceptance of demotion does not estop from claiming right to work at previous job but grievor no longer qualified; grievance dismissed. *Re National Steel Car Ltd. & U.S.W.A., Loc. 7135; Melanson grievance*, February 16, 1986. Gandz — 8 pages. (73)†

**Management Rights**

Medical examinations — requirement reasonable except in two respects; grievance allowed in part. *Re Corby Distilleries Limited & The Distillery Workers, Loc. 96, affiliated with Distillery, Wine and Allied Workers, Int'l.; individual and union policy grievance*, February 3, 1986. Howe — 44 pages. (74)

**Maternity leave**

Entitlement — one year continuous service requirement — grievor not entitled to pregnancy leave since she has not accumulated one year's service; grievance dismissed. *Re Westinghouse Canada Inc. & U.E.R.M.W., Loc. 548; Thompson grievance*, February 26, 1986. Majority: Dunn, Kacur; dissent: Russell — 9 pages. (75)

**Overtime**

Distributions incident necessitating overtime occurs during grievor's shift — collective agreement considered; obligation to call in grievor found; time of overtime decision irrelevant, comparable overtime opportunity granted. *Re Manville Canada Inc. & Energy and Chemical Workers; union grievance*, February 10, 1986. Betcherman — 8 pages. (76)†

**Overtime Pay**

Night shift worked after attending day meeting — meeting held not to be "work"; overtime pay does not apply; grievance dismissed. *Re Firestone Canada Inc. & United Rubber Workers, Loc. 113; group grievance*, February 11, 1986. Solomatenko — 10 pages. (77)†

**Pensions**

Employer contributions — to be paid from date of hiring; collective agreement considered; other plans used for other employees irrelevant; grievance allowed. *Re United Assoc. of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Loc. 46 & O.P.E.I.U., Loc. 343; Forbes grievance*, February 11, 1986. Kirkwood — 5 pages. (78)†

**Procedure**

Attendance of press — members of press allowed to be in attendance at hearing; interim award. *Re Seneca College & O.P.S.E.U.; group grievance*. See (52), (53), *supra*. (79)\*



Carriage of grievance by grievor — grievor not a party to the collective agreement — branch affiliate not willing to proceed; grievance dismissed. *Re Geraldton Board of Education & Branch Affiliate of The Federation of Women Teachers and The Ontario Public School Teachers Federation; Reichenauer grievance*, January 31, 1986. Saltman — 8 pages. (80)

### Promotion

Job beyond the scope of the bargaining unit — selection procedure not a matter covered by the collective agreement; grievance dismissed. *Re Hamilton-Wentworth, Regional Municipality of & C.U.P.E. (Health Unit), Loc. 167; Giavedoni grievance*, February 5, 1986. Devlin — 12 pages. (81)

Qualifications — employer giving statement of educational requirements set out in the job posting, a construction which it could not reasonably bear and in so doing acting in a discriminatory manner; grievance allowed. *Re Family and Children's Services of Thunder Bay & C.U.P.E., Loc. 2296; Shlapski grievance*, January 10, 1986. Eaton — 37 pages. (82)†

Qualifications — grievor's abilities not fully assessed by company; grievance allowed, grievor awarded position for 30-day trial period. *Re Infasco Nut, Division of Ivaco Inc. & U.S.W.A., Loc. 9015; Kulon grievance*, February 18, 1986. Barrett — 11 pages. (83)†

Qualifications — grievor claimed previous training — applicants to be measured by job requirements not by most qualified; grievor not credible; grievance dismissed. *Re Roux Company & E.C.W.U., Loc. 266; Harview grievance*, February 10, 1986. Saltman — 10 pages. (84)

Qualifications — grievor's education did not meet specified norm — grievor not qualified for job, therefore a junior employee awarded job; grievance dismissed. *Re Denison Mines Limited & U.S.W.A., Loc. 5815; Thomas grievance*, February 14, 1986. See (35), (44) *supra*. (85)

Qualifications — grievor's opinion of usefulness of qualification required irrelevant; grievor unqualified; attitude poor as well; grievance dismissed. *Re Peterborough Civic Hospital & O.N.A.; Brown grievance*, February 11, 1986. Egan — 8 pages. (86)†

Qualifications — no training provision in agreement — due to the competition clause, the grievor was tested and found unsuitable for the job; grievance dismissed. *Re Zehrs Markets & U.F.C.W.U., Loc. 1977; Honderich grievance*, February 5, 1986. Barton — 6 pages. (87)†

Qualifications — seniority not a factor unless other factors equal, management judgement exercised fairly; grievance dismissed. *Re Kayser-Roth Canada Limited & Amalgamated Clothing and Textile workers, Loc. 1826; Gilders grievance*, February 3, 1986. Hunter — 11 pages. (88)†

Remedy where position improperly awarded — grievor capable; given familiarization period as stated in the collective agreement; grievor awarded position. *Re Long Manufacturing Ltd. & I.A.M., Loc. 2330; Figueiredo grievance*, January 28, 1986. Majority: McLaren, Solberg; dissent: Davies — 9 pages. (89)

Right to return to former position; trial period of five days for new job — grievor failed to reject job during first five days of his trial period — company can conclude job was filled on a permanent basis by the grievor; grievance dismissed. *Re Ralston Purina Canada Inc. & E.C.W.U., Loc. 41; Rayson grievance*, February 21, 1986. Brown — 11 pages. (90)

Selection procedure — grievor entitled to a fuller and fairer consideration of her qualifications not to be compared to outside candidate who was hired; grievance allowed. *Re The Pickering Hydro-Electric Commission & Utility Workers, Loc. #1, Unit #3; Hunter grievance*, January 24, 1986. Mitchnick — 27 pages. (91)†

Working leader — working leader not a promotion or classification; seniority thus not critical factor; grievance dismissed. *Re Celanese Canada Inc. & E.C.W.U., Loc. 9670; Brady grievance*, February 11, 1986. Emrich — 24 pages. (92)†

### Scheduling of Work

Rotation of Shifts — grievor holding dual classification — company having past practice of rotating shifts between two classifications; grievance allowed. *Re Canron Inc. Ingot Mould Foundry & U.S.W.A., Loc. 2940; Liota grievance*, January 30, 1986. O'Shea — 9 pages. (93)

Shift addition — within management rights; link to production increase shown; collective agreement allows; company cannot unilaterally eliminate rest period; grievance partially allowed. *Re Waltec Plastics Division of Waltec Inc. & Amalgamated Clothing and Textile Workers, Loc. 1476; union grievance*, February 4, 1986. Majority: Brent, Sergeant; dissent: Clark — 11 pages. (94)

### Sick Leave

Injury-on-duty-leave: calculation to include normal shift premium; grievances allowed. *Re Canada Post Corporation & Letter Carriers Union; Boyes, O'Heir and Ablitt grievances*, January 22, 1986. M. Picher — 21 pages. (95)

Loss of credits — policy ruling that employees that call in sick and return for same shift (i.e., late), they must provide medical certificates stating their fitness to work. Grievors failed to do so; grievance dismissed. *Re Canada Post Corporation & CUPW; Seaton, Bennet and Rickets grievance*, January 22, 1986. P. Picher — 25 pages. (96)\*

Payment — employer attempting to have employees work to make up for absence due to illness — all employees entitled to one day sick leave per month as in agreement; grievance allowed. *Re North American Lumber Limited & U.F.C.W.U., Loc. 409; union grievance*. See (6), *supra*. (97)

### Transfer

Assignment to different section of plastic shop — sections held to be part of one shop — various duties part of one classification, not a transfer; grievance dismissed. *Re DeHavilland Aircraft of Canada & U.A.W., Loc. 112; Preston grievance*, February 14, 1986. O'Shea — 16 pages. (98)†

Inability to perform job — grievor deemed unfit for job; employer justified in transferring employee on basis of safety at workplace; grievance dismissed. *Re International Harvester Co. & U.A.W., Loc. 127; Hall grievance*, February 20, 1986. Barton — 14 pages. (99)†

**Vacation Pay**

Piece worker — collective agreement clear; pay rate to be based on average hourly wage not total yearly earnings; grievance allowed. *Re Toronto Chromium Plating Ltd. & U.S.W.A., Loc. 7558; Russo grievance*, February 5, 1986. Brunner — 7 pages. (100)

Entitlement — occasional teachers receive no vacation pay in addition to amounts provided for by the grid; grievance dismissed. *Re Hamilton, Board of Education for the City of & Ontario Secondary School Teacher's Federation, District 8; policy grievance*, January 26, 1986. Majority: Springate, Thiessen; dissent: Purdy — 35 pages. (101)

**Wages**

Assignment to lower rated position — employees returning to former classification to receive prevailing rate of pay; grievance dismissed. *Re Kanata, Corporation of the City of & C.U.P.E., Loc. 1670; McIntyre grievance*, February 10, 1986. Pyle — 15 pages. (102)†

Entitlement to pay during lunch period — grievors not collar to collar workers and work underground half days; grievance dismissed. *Re Denison Mines Limited & U.S.W.A., Loc. 5762; policy grievance*. See (35), (44), *supra*. (103)

Higher classification duties engaged in voluntarily — union pursues extra pay, not employee; management gave no order and under no obligation; grievance dismissed. *Re Lambton County Roman Catholic Separate School Board & C.U.P.E., Loc. 1250; policy grievance*, February 14, 1986. Gandz — 4 pages. (104)†

Settlement guaranteeing grievor particular rate — not applicable to bumping rights or demotions; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; McKay grievance*, January 14, 1986. M. Picher, McDonald, Sergeant — 13 pages. (105)

**Welfare Plans**

Continuation of benefits during illness — grievor still employee and so still entitled; insurance plan details do not affect entitlement under collective agreement; compensation with interest granted; grievance allowed. *Re Royal City Ambulance Service & O.P.S.E.U., Loc. 231; Dolby grievance*, February 7, 1986. Joyce — 13 pages. (106)

Entitlement to weekly indemnity payments — grievor not supplying medical documentation of condition and treatment; grievance dismissed. *Re Carling-O'Keefe Breweries Ontario Limited & Brewery, Malt and Soft Drink Workers, Loc. 325; Biggar grievance*. See (1), *supra*. (107)

**Work Assignment**

After-hours complaints handled by non-bargaining unit employees — rare occurrence, work had never been done by bargaining unit; grievance dismissed. *Re Windsor Star, a Division of Southam Inc. & Windsor Newspaper Guild, Loc. 239; policy grievance*, January 29, 1986. Hunter — 10 pages. (108)†

Baggage delivery prima facie not taxicab work — collective agreement does not modify; no improper assignment of bargaining unit work; grievance dismissed. *Re 121571 Canada Inc. & Ontario Taxi Association, Loc. 1688; union grievance*, February 1, 1986. Pyle — 17 pages. (109)†

Duties transferred to supervisor — grievor's hours reduced, arbitrary transfer of work contrary to collective agreement; grievance allowed in part, duties reassigned to grievor. *Re Parnell Foods (1981) Ltd. & United Rubber Workers, Loc. 994; Breckenridge grievance*, January 23, 1986. M. Picher — 15 pages. (110)

Foreman observed filling duties of grievor's former position — not enough work performed to jeopardize bargaining unit; grievance dismissed. *Re Sherman Mine, Cliffs of Canada Limited & U.S.W.A., Loc. 6896; Gauvreau grievance*, February 7, 1986. Boscarior — 5 pages. (111)†

Loss of overtime opportunity — grievor not called in to cover shift on his day off and non-bargaining unit worker assigned the job; grievance allowed. *Re Denison Mines Limited & U.S.W.A., Loc. 5815, Zabo grievance*. See (35), (44), (85), (103), *supra*. (112)

Machinists claiming work improperly assigned to mechanical maintenance personnel — estoppel not applicable since no detrimental reliance; decision fully consistent with the collective agreement; grievance dismissed. *Re Dominion Chain Inc. & I.A.M.A.W., Loc. 1927; group grievance*, February 26, 1986. Majority: Kennedy, MacDermid; dissent: Solberg — 16 pages. (113)\*

New equipment — inter-union dispute; work given to whoever doing work at worksite; not work currently being performed; equipment really a tool; grievance dismissed. *Re Boise Cascade Canada Ltd. & United Paperworkers Int'l. Union, Loc. 92; policy grievance*, February 24, 1986. Weatherill — 9 pages. (114)\*

New technology created redundancy — some duties allocated to non-bargaining personnel; technology found to be introduced for sound business reasons and in good faith; grievance dismissed. *Re Transit Windsor & A.T.U., Loc. 616; Paranuzzi grievance*, February 14, 1986. Egan — 9 pages. (115)

Supervisor doing bargaining unit work — collective agreement does not prohibit; work done not enough to put supervisor in bargaining unit; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Loc. 1005, Mordue grievance*, January 30, 1986. Majority: McLaren, Storie; dissent: Sharp — 13 pages. (116)

**Construction Industry Arbitration — Ontario Labour Relations Board**

The following awards were filed with the Office of Arbitration during the months of September, October and November, 1985.

**Collection**

Contributions to various funds under the collective agreement — employer not present at hearing; order to pay issued. *Re Agnew Electric & I.B.E.W., Loc. 353; union grievance*, August 22, 1985. Satterfield, Wilson, Kobryn — 4 pages. (117)

Pension fund payments — order to pay issued. *Re Standard Insulation Ltd. & Int'l. Association of Heat and Frost Insulators and Asbestos Workers, Loc. 95; union grievance*, August 12, 1985. MacDowell, Blair, Kennedy — 4 pages. (118)



Welfare fund and other contributions — employer not present at hearing; order to pay issued. *Re DiGiacomo Canada Inc. & Labourers' Int'l., Loc. 183; union grievance*, October 2, 1985. Satterfield, Wilson, Kobryn — 4 pages. (119)

#### **Discharge**

Fraud — submitting forged documents to receive subsistence allowance — employer-employee trust breached; grievance dismissed. *Re E.P.S.C.A. and Ontario Hydro & Labourers' Int'l., Loc. 607; O'Leary grievance*, September 25, 1985. Howe, Grant, Rutherford — 16 pages. (120)

#### **Procedure**

Adjournment — adjournment granted *sine die* for a period not exceeding one year. *Re Horton C.B.I. Ltd. & Millwright District Council of Ontario, Loc. 1151; union grievance*, August 2, 1985. Springate, Blair, Rutherford — 2 pages. (121)

Standing — determination by Board that matter will be relisted for hearing after appropriate parties are given standing. *Re Ellis-Don Ltd. & Labourers' Int'l., Loc. 183; union grievance*, August 15, 1985. Satterfield, R. Wilson, J. Wilson — 10 pages. (122)

Arrest warrant — witness properly served with summons failing to appear at Board hearing; presence of witness material to ends of justice; warrant issued for arrest of witness by Board. *Re George Klein c.o.b. as Columbia Interior Contracting & United Brotherhood of Carpenters and Joiners, Loc. 675; union grievance*, October 30, 1985. Freedman, Stamp, Wilson — 10 pages. (123)

#### **Travel Allowance**

Entitlement — base city is designated as where claimant is ordinarily resident and not where claimant reports for work; grievance allowed. *Re E.S. Fox Ltd. & Sheet Metal Workers, Loc. 269; policy grievance*, September 6, 1985. MacDowell, Stamp, Kobryn — 9 pages. (124)

#### **Wages**

Shift premiums — work performed on Saturdays, Sundays and holidays requires shift premiums to be paid in geographic area covered by appendix in provincial collective agreement; grievance allowed. *Re Ontario Sheet Metal and Air Handling Group & Sheet Metal Workers, Loc. 473; union grievance*, October 3, 1985. Furness, O'Keefe, Wilson — 9 pages. (125)

#### **Work Assignment**

Subcontracting — employer violated collective agreement by using improper contractor; employer to cease and desist. *Re Piggott Construction Ltd. & I.U.O.E., Loc. 793; union grievance*, August 9, 1985. Satterfield, J. Wilson, N. Wilson — 5 pages. (126)

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# Monthly Bulletin



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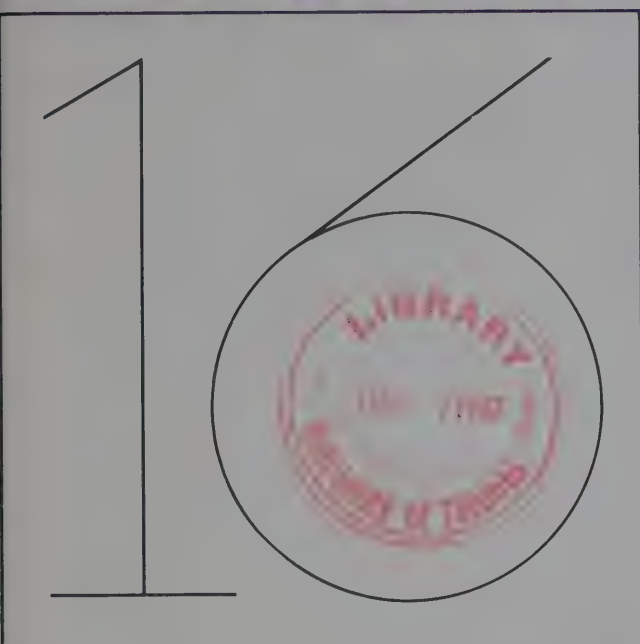
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Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1981, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of March, 1986. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B and K.P. Swan, P.Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.

## Arbitrability

Discharge of probationary employee — submission to board on preliminary objection; established discriminatory discharge; grievance arbitrable. *Re Inglebrook Nursing Home Ltd. & H.O.P.E., Local 1976, U.F.C.W.U.*; *Cary grievance*; February 27, 1986. Majority: Verity, Rudrum; dissent: Sargeant — 17 pages. (1)



Evaluation of part-time employee alleged to be unfair — no provision to grieve evaluation; evaluation not disciplinary; no provision in collective agreement requiring fair evaluation and no duty to act fairly conceded; no substantive or procedural right violated; grievance not arbitrable. *Re F.W. Woolworth Co. Ltd. & U.F.C.W.U., Local 409; McKay grievance*, undated. Phillips, Johnson, Sergeant — 3 pages. (2)

Group grievances alleged — multiple individuals sign grievance forms; grievance with more than one signature not necessarily a group grievance; grievances arbitrable. *Re iil Ltd. & United Brotherhood of Carpenters and Joiners, Local 2679; Ferez et al grievances*, March 11, 1986. Hearn — 20 pages. (3)†

Section 45 — no time stipulated for employer to refer grievance to arbitration — employer having recourse to arbitration after 30 days; grievance arbitrable. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; Wroblewski grievance*, March 5, 1986. Barrett — 8 pages. (4)†

Section 45 — request for arbitration made after collective agreement expired — grievance arose during statutory "freeze" period; expedited arbitration procedure under s. 45 applicable even when collective agreement expired. *Re Eastern Ontario Health Unit & C.U.P.E., Local 1997; Lafreniere grievance*, February 28, 1986. Willes — 23 pages. (5)

Settlement conditional upon ratification by Ontario Human Rights Commission — if grievor withdraws complaints and the Ontario Human Rights Commission refuses to ratify, the agreement is at an end and arbitrator has jurisdiction to hear merits of grievance. *Re Consumers Distributing Company Ltd. & Teamsters, Local 419; Persaud grievance*, January 15, 1986. Rayner — 11 pages. (6)\*

Termination of casual employee — inconsistency between provisions of collective agreement; not appropriate to dispose of issue on preliminary objection; grievance to be heard on the merits. *Re Toronto, Corporation of the City of & C.U.P.E., Local 43; Ainsworth and Bailey grievances*, March 10, 1986. Majority: Kennedy, Solberg; dissent: Milks — 7 pages. (7)

### Bargaining Unit

New classification created — union recognized as bargaining agent for all office and clerical employees — new job duties similar to duties of classifications already within bargaining unit; grievance allowed. *Re Abitibi-Price Fine Papers (Port Arthur Division) & O.P.E.I.U., Local 236; policy grievance*, March 11, 1986. Majority: MacDowell, Best; dissent: Ferguson — 25 pages. (8)

### Board of Arbitration

Authority to apply *Charter of Rights and Freedoms* — no authority to determine constitutional validity of legislation. *Re Hamant Car and Engineering Ltd. & United Steelworkers, Local 8179; Jaffray grievance*, March 20, 1986. Brent — 32 pages. (9)\*†

Retention of jurisdiction to implement award — board may complete award by dealing with compensation. *Re Loeb Inc. & Teamsters, Local 91; union grievance*, March 11, 1986. Thorne — 6 pages. (10)†

### Call-in

Employees sent home after one hour due to snow storm — exercise of employer's right to schedule; estoppel not applicable; only reporting allowance payable; grievance dismissed. *Re Peelle Co. Ltd. & United Steelworkers; Bennett representative grievance, grievances 01/85, 02/85*, February 28, 1986. Burkett — 11 pages. (11)\*

Grievor called in outside his standard hours — grievor on call; payment to employee on call different from payment to employee called in unexpectedly; grievance dismissed. *Re Niagara, Regional Municipality of & C.U.P.E., Local 1287; Jones grievance*, March 3, 1986. Egan — 5 pages. (12)\*†

### Classification

Creation of new classification by company without union's agreement — new position is one already listed as skilled trades classification in collective agreement and is in place in another branch; grievance dismissed. *Re Northern Telecom Canada Limited & U.A.W., Local 1915; union grievance*, March 13, 1986. Weatherill — 8 pages. (13)

Grievor performing new job similar to previous job but using a different machine — new product lower in quality, higher in quantity; product not determining factor of job function; grievance dismissed. *Re DeHavilland Aircraft of Canada & U.A.W., Local 673; Carson grievance*, March 14, 1986. H.D. Brown — 15 pages. (14)

Revision alleged: grievor's work assignment altered with introduction of word processor — revision clause in agreement must be followed; grievance allowed. *Re DeHavilland Aircraft of Canada & U.A.W., Local 673; Chiaramonte grievance*, March 14, 1986. H.D. Brown — 8 pages. (15)

### Contracting Out

Not prohibited by collective agreement, no bad faith; within management's rights; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 1915; Cameron grievance*, March 12, 1986. Dunn — 8 pages. (16)

### Damages

Improper termination of contract — entitled to salary lost during 1983-84 year less monies earned elsewhere; calculation based on category A3 plus one year teaching experience, moving expenses to new job location, lost benefits; interest on entire sum calculated in accordance with O.L.R.B. practice note No. 13. *Re Ottawa Roman Catholic Separate School Board & Ontario English Catholic Teachers' Association; Burchill grievance*, February 14, 1986. D.W. Scott — 17 pages. (17)

### Demotion

Disciplinary demotion — precise limitation of demotion required; reinstatement without compensation. *Re Etobicoke, Corporation of the City of & Etobicoke Professional Firefighters, Local 1137, International Association of Firefighters; Davidson grievance*, March 5, 1986. P. Picher — 30 pages. (18)

### Discharge

Absence for two consecutive days without notifying employer — grievor quitting voluntarily; grievance dismissed. *Re Exhibition Place, Board of Governors of & Labourers' Int'l., Local 506; Geddes grievance*, March 6, 1986. Mitchnick — 15 pages. (19)

Absence without justification or excuse — grievor goes on vacation while claiming sick leave; past record considered; discharge justified; grievance dismissed. *Re Toronto Abattoirs Ltd. & U.F.C.W.U./Rybczynski grievance*, March 12 1986. Barrett — 9 pages. (20)†

Absence without leave — grievor 12 year employee before religious conversion not allowing to work Friday nights and Saturdays; company able to accommodate with temporary workers; discharge a discrimination within the policy of Human Rights legislation; grievor entitled to reinstatement. *Re Chrysler Canada Ltd. & U.A.W., Local 444; Garneau grievance*, February 26, 1986. Kennedy — 26 pages. (21)\*

Absence without notice — grievor absent as a result of compensable accident; failure to keep employer informed of condition not found to violate duty to provide reasonable explanation for absence; reinstatement with full seniority. *Re Long Manufacturing Limited & I.A.M., Lodge 2330; O'Brien grievance*, March 8, 1986. Egan — 8 pages. (22)†

Absenteeism: alcoholism underlying cause — post-discharge evidence relevant to mitigation of penalty; grievor in process of rehabilitation; conditional reinstatement. *Re Canadian Broadcasting Corporation & C.U.P.E.; Moulson grievance*, March 6, 1986. Thorne — 16 pages. (23)\*

Absenteeism — progressive discipline imposed; grievor failing to provide medical documentation linking absences and lateness to medical condition; company acting without sufficient inquiry; conditional reinstatement. *Re Beaver Lumber Co. Ltd. & Teamsters, Local 419; Lyons grievance*, March 21, 1986. McLaren — 12 pages. (24)

Alcoholism — grievor has long service, reasonable work record and showing efforts to rehabilitate himself; conditional reinstatement. *Re Keeprite Inc. & Keeprite Workers' Independent Union; Clarke grievance*, March 7, 1986. Majority: Kruger, Fishbein; dissent: Bertuzzi — 12 pages. (25)

Assault on elderly, racist wheelchair patient — provocation and self-defence alleged; discharge excessive reaction to offence by employee with good record; reinstatement with seniority but without back pay. *Re Riverdale Hospital & C.U.P.E., Local 79; Greaves grievance*, December 19, 1985. Majority: Rayner, Taylor; dissent: Ronson — 12 pages. (26)\*

Assault on fellow employee — grievor possessing good record; situation not likely to be repeated; 9-week suspension substituted. *Re Toronto Western Hospital & C.U.P.E., Local 1744; Dacanay grievance*, February 24, 1986. E.B. Jolliffe — 14 pages. (27)†

Assault on supervisor with dangerous weapon — grievor's version of events not believed; criminal conviction resulting from incident relevant evidence; discharge justified; grievance dismissed. *Re Rubbermaid Canada Inc. & U.A.W., Local 252; D'Arrigol grievance*, March 7, 1986. Hinnegan — 4 pages. (28)

Culminating incident — deliberate act of mischief and insubordination committed by turning up thermostats against direct orders; grievor claimed recording temperatures for report; just cause for dismissal; grievance dismissed. *Re B.C. Polygrinder & United Brewery Workers, Local 326; Benoit grievance*, March 10, 1986. E.B. Jolliffe — 18 pages. (29)

Culminating incident — intoxication and threats; on union business — insubordination rules relaxed but not to cover grievor's behaviour; disciplinary record of absenteeism relevant; grievance dismissed. *Re Mueller Limited & U.A.W., Local 456; Haggan grievance*, December 5, 1985. Palmer — 8 pages. (30)

Culminating incident; unsafe act — grievor's production good but ability to accept supervisory direction poor; suspension substituted for discharge. *Re Cambridge Brass, Division of Waltec Inc. & United Steelworkers, Local 4045; Rivers grievance*, March 19, 1986. H.D. Brown — 20 pages. (31)

Dishonest conduct alleged — evidence not clearly proving grievor intending to act for his own benefit; suspension substituted for discharge. *Re Tricil Limited & C.U.P.E., Local 1932; Bourdeau grievance*, March 12, 1986. Fraser — 12 pages. (32)†

Failure to report accident — employer failed to meet onus of proving that grievor knew of accident and failed to report it; grievor failed to keep proper look-out; reinstatement without compensation. *Re United Parcel Service Canada Ltd. & Teamsters; Langdon grievance*, February 12, 1986. Kruger; partial dissents: Brady, McRae — 17 pages. (33)

Falsification of records — grievor employed in unsupervised position requiring trust that duties would be performed in honest and responsible manner; grievor claimed delay in preparation of reports due to personal problems and had no intent of falsify; onus on proving that grievor had falsified records met by employer. *Re Eastern Ontario Health Unit & C.U.P.E., Local 1997; Lafreniere grievance*, February 28, 1986. Willes — 23 pages. (34)\*

Fraud — thirty years seniority justifying reinstatement without compensation. *Re Union Gas Ltd. & E.C.W.U.; Theaker grievance*, February 20, 1986. Teplitsky — 2 pages. (35)

Illness and disability — inability to perform assigned task; only one of three methods demonstrated; physical examination ordered as a result of history of heart problem; disciplinary termination for refusal to work; medical clearance after long delay; company liable for lost income. *Re Camco Inc. & U.E., Local 550; Oliverio grievance*, March 10, 1986. Gandz — 8 pages. (36)

Inability to perform all duties of a job due to injury — no need for such ability for grievor to maintain right to job level; company concern for health not supported medically; discharge excessive. *Re Norton Canada Ltd. & United Steelworkers, Local 3696; Czapinski grievance*, March 7, 1986. Boscarol — 14 pages. (37)†

Insubordination alleged — grievor refusing to follow company physician's orders to visit his family doctor; family doctor not a specialist as defined in the collective agreement; grievance allowed. *Re Parkwood Hospital & London and District Service Workers, Local 220; Brophy grievance*, March 10, 1986. Gorsky, Heffernan, McDonald — 19 pages. (38)

Loss of seniority upon lengthy absence due to illness or disability — not to be equated with loss of employment; grievor entitled to first vacancy for which he qualified over new hire; when re-employed grievor assumes probationary status; grievance allowed in part. *Re Mack Canada Inc. & I.A.M., Lodge #2281; Anderson grievance*, March 13, 1986. P.C. Picher — 18 pages. (39)\*



Negligence: damage to company property — strong mitigating factors; grievor negligent but not enough to justify discharge; award limited to death benefits to be paid to his estate. *Re E.B. Eddy Forest Products Ltd. & Canadian Paperworkers, Local 31; LaPlante grievance*, March 10, 1986. Dunn, Paxton, Anissimoff — 12 pages. (40)

Possession and use of narcotic during working hours alleged — not established on evidence adduced; onus of proof not met; grievance allowed. *Re Camco Inc. & U.E., Local 550; Thomson grievance*, March 20, 1986. Hunter — 25 pages. (41)†

Theft — failure to immediately suspend not fatal to discharge as explanation for delay accepted; grievance dismissed. *Re Dynasty Inn & Hotel, Restaurant Employees, Local 280; Nolan grievance*, March 20, 1986. Dunn — 4 pages. (42)†

Theft — grievor's explanation not credible and had been disciplined for violating the employee purchase policy previously; grievance dismissed. *Re Dominion Stores Limited & United Steelworkers, Local 14045; Fox grievance*, February 18, 1986. Welling — 10 pages. (43)

Theft — low value property but grievor aware of company policy — while no higher standard for union official in such circumstances or breach of trust, given access to all parts of plant, planned operation and inadequate number of mitigating factors; grievance dismissed. *Re Inglis Limited & United Steelworkers, Local 2900; Joseph grievance*, March 7, 1986. Barton — 11 pages. (44)†

### Discipline

Absenteeism — pattern of absenteeism in conjunction with scheduled days off; employer not questioning reasons for absences; employer responsible for pattern; grievance allowed. *Re Cambridge Country Manor & S.E.U., Local 204; Watson grievance*, March 7, 1986. Majority: Brent, McDonald; dissent: Addario — 6 pages. (45)

Absenteeism — suspension imposed on grievor following seven absences from work, five of which were for medical reasons; absences due to illness not to be used to trigger discipline; suspension rescinded; grievance allowed. *Re Echlin Canada Limited & United Steelworkers, Local 5141; Pregent grievance*, March 21, 1986. Thorne — 10 pages. (46)†

Absenteeism — written warning regarding grievor's inability to attend work on a regular basis; letters part of program of corrective discipline; grievance dismissed. *Re Essex Nursing Home & C.U.P.E., Local 1370, group grievance*, March 19, 1986. Gorsky, Pittl, Villamizar — 10 pages. (47)

Breach of employer rules — excessive time on coffee breaks; suspension imposed on grievor Binns excessive; grievance allowed in part; suspension imposed on grievor Foote upheld; grievance dismissed. *Re Thibodeau-Finch Express Ltd. & Teamsters, Local 141; Binns and Foote grievances*, March 11, 1986. M.G. Picher, Barclay, Palmer — 13 pages. (48)

Carelessness — dangerous dereliction of duty; failure to reassemble machinery after routine shutdown resulted in two expensive spills of liquid steel; four-day suspension upheld. *Re Stelco Inc. & United Steelworkers, Local 8782; McKay grievance*, December 23, 1985. Welling — 8 pages. (49)

Carelessness — grievor previously suspended for carelessness; little room for arbitral substitution of penalty; grievance dismissed. *Re H.L. Blatchford Ltd. & E.C.W.U., Local 593; Stokx grievance*, January 23, 1986. Majority: Brandt, O'Byrne; dissent: Batten — 8 pages. (50)

Compulsory transfer in addition to previous discipline — grievor chose from three disciplinary options a year earlier; unilateral transfer fundamentally unjust; grievance allowed. *Re Bruce County Board of Education & Ontario Secondary School Teachers' Federation, District 44; Morin grievance*, March 20, 1986. Hunter, Thiesson, Merritt — 11 pages. (51)

Dishonesty alleged — improper ticketing procedure at parking lot; insufficient evidence to prove grievor's guilt; grievance allowed. *Re Citipark & OK Parking Services, Division of Citicom Inc. & S.E.U. Local 204, Raja grievance*, March 6, 1986. Mitchnick, Sergeant, McDonald — 10 pages. (52)

Insubordination — refusal to carry out an order and verbal insult to manager established; extenuating circumstances; some vagueness in order and inaccuracy in facts giving rise to refusal; language used not uncommon in workplace; insolence not seen by customers and most employees; five-day suspension reduced to two days; grievance allowed in part. *Re F.W. Woolworth Co. Limited & U.F.C.W.U., Local 409; Tooke grievance*, undated. Phillips, Johnson, Sergeant — 4 pages. (53)

Insubordination alleged — grievor refusing to pay shortfall in cash under new system which required grievor to attend at work outside regular working hours to verify cash received and which prevented grievor from verifying cash received at end of her shift; new system unreasonable; discipline rescinded; grievance allowed. *Re Ledo Hotel (Grottoli and Hudon Co. Ltd.) & R.W.D.S.U., Local 579; L'Heureux grievance*, March 19, 1986. Boscariol — 9 pages. (54)†

Leaving workplace without permission — work record poor; grievance dismissed. *Re E.B. Eddy Forest Products Ltd. & Canadian Paperworkers, Local 31; LaPlante grievance*. See (40), *supra*. (55)

Leaving work without permission — disciplinary record poor; claim of search for supervisor to report rash rejected; one-day suspension upheld. *Re Diversitech General & United Rubber Workers, Local 455; Gasperetti grievance*, March 3, 1986. Egan — 7 pages. (56)†

Leaving work without permission — important assignment left incomplete; illness claimed, but did not report to nurse or doctor; suspension justified. *Re Standard Modern Technologies & United Steelworkers, Local 3252; Faggiani grievance*, March 3, 1986. Weatherill — 9 pages. (57)

Loss of benefits during suspension period — collective agreement makes no provision for continuation; normal entitlement rules apply; grievance partially allowed. *Re International Carriers Ltd. & Teamsters, Locals 141, 879, 880 and 938; MacVicar grievance*, March 6, 1986. Saltman, Burnell, Doe — 8 pages. (58)

Present on employer's premises while off duty: breach of company rule — grievor's explanation not credible; grievance dismissed. *Re Sheraton Centre Hotel & Hotel, Restaurant Employees, Local 75; Jack grievance*, March 25, 1986. Barrett — 10 pages. (59)†

Sleeping on the job — sleep only a form of rest when body and mind not functioning at normal pace; proven here; inability to perform job; grievance dismissed. *Re James River-Marathon Ltd. & United Paperworkers' Int'l., Local 548; Dumas grievance*, March 6, 1986. Aggarwal — 20 pages. (60)†

Violation of safety rule — grievor aware of seriousness with which company viewed offence; six and one-half day suspension not unreasonable; grievance dismissed. *Re DCA Inc. & E.C.W.U., Local 539; Tripp grievance*, March 18, 1986. Thorne — 14 pages. (61)†

### Estoppel

Attendance at courses in cardiac life support required by employer hospital — failure to assert right to compensation granted by collective agreement; estoppel not established; compensation ordered. *Re Plummer Memorial Public Hospital & O.N.A.; Moodie representative grievance*, March 11, 1986. Majority: Devlin, McIntyre; dissent: Mustard — 17 pages. (62)

Entitlement of owner-operator to share of exchange differential when company receives payment in U.S. funds — board agrees with grievor's position; due to circumstances of no changes in successive collective agreements since 1979, union is estopped from succeeding. *Re ICL International Carriers Limited, Special Commodities Division & Teamsters, Local 880; Evans grievance*, January 24, 1986. Majority: Brandt, Burnell; dissent: Baillargeon — 14 pages. (63)

Vacation entitlement — method of calculation for part-time employees not clear and unambiguous past practice; estoppel not established; grievance allowed. *Re Bonnechere Manor & O.N.A.; Breen grievance*, March 17, 1986. Foisy — 14 pages. (64)†

### Evidence

Admissibility — evidence of incident about which company not informed until grievance procedure; company seeking to rely on the evidence to justify discharge; evidence received with reservation as to its use or relevance; interim award. *Re Scarborough, Corporation of the City of & Scarborough Civic Employees, Local 368; Wright grievance*, March 10, 1986. Brown, Winkler, Hodges — 4 pages. (65)

### Grievance Procedure

Failure to comply with form of grievance — lack of signature; no notice of objection by employer; company not prejudiced by being required to justify dismissal at arbitration hearing on the merits; should seek to find grievance arbitrable if possible. *Re B.C. Polygrinders & United Brewery Workers, Local 326; Benoit grievance*, March 10, 1986. E.B. Jolliffe — 18 pages. (66)

Time limits — written grievance filed late; no reasonable excuse given; time limits mandatory; grievance dismissed. *Re Les Transports Provost Inc. & E.C.W.U.; Thatcher grievance*, March 25, 1986. Egan — 7 pages. (67)

Timeliness — grievance not filed within three working days of notice of discharge; reasonable grounds for extension of time; grievance arbitrable. *Re Quality Meat Packers Ltd. & U.F.C.W.U.; Pinto grievance*, March 5, 1986. Weatherill, Peterson, Hand — 9 pages. (68)†

### Health and Safety

Deliberate creation of hazardous condition in the operation of an overhead crane — reaction to existing health risk by preventing entrance of transfer car emitting excessive diesel fumes to billet area; abdication of responsibility by grievor; 4-day suspension upheld. *Re Stelco Inc. & United Steelworkers, Local 1005; Appleby grievance*, January 3, 1986. Majority: Rayner, Jarvis; dissent: Marshall — 10 pages. (69)

Purchase of safety boots — compensation after 12 months have passed since the last purchase; grievance dismissed. *Re Woodbridge Foam Corporation & U.A.W., Local 1934; Agyemang grievance*, January 24, 1986. Majority: E.B. Jolliffe, Sargeant; dissent: Murphy — 8 pages. (70)

### Holiday

Unilateral alteration of lieu day by employer — no entitlement to premium pay but entitlement to damages of \$25.00 for breach of agreement. *Re Riverdale Hospital & C.U.P.E., Local 79; An-Shyr Wang grievance*, January 29, 1986. Teplitsky, Solberg, Bass — 7 pages. (71)

Lieu days — collective agreement providing equal treatment in regard to entitlement to lieu days when statutory holiday falls on day that mechanics and fire prevention training officer on sick leave or worker's compensation; grievance allowed. *Re Brampton Fire Department (Brampton, Corporation of the City of) & Brampton Professional Firefighters' Association; union grievance*, March 14, 1986. Burkett — 15 pages. (72)

### Hours of Work

Flexible hours arrangement — privilege of flexible hours not to be unilaterally revoked during freeze period imposed by s. 79 of Labour Relations Act (Ontario) following notice to bargain and expiry of collective agreement; grievance allowed. *Re Dover Corporation (Canada) Limited, Turnbull Elevator Division & Int'l. Federation of Professional and Technical Engineers, Local 164; union grievance*, March 15, 1986. E.B. Jolliffe — 23 pages. (73)†

### Illness

Return to work — grievor providing doctor's report confirming her fitness to return to work; employer failing to challenge report or pursue a further opinion; grievance allowed. *Re Glassgoods Division Multifoods Inc. & U.F.C.W.U., Local 1129; Caputo grievance*, March 7, 1986. Devlin — 16 pages. (74)

### Job Posting

Qualifications posted — requirements changed when job advertised publicly; not a substantial change; no evidence of actual or intended misleading; grievance dismissed. *Re York Region Board of Education & C.U.P.E., Local 1734; policy grievance*, March 5, 1986. T. Jolliffe — 12 pages. (75)†

Transfer alleged to trigger job posting requirements and seniority rights — movement to another job in same classification and same department not a transfer; transfer occurring if movement between departments within same classification occurs; grievance dismissed. *Re Windsor, Corporation of the City of & C.U.P.E., Local 543-1; Sasso grievance*, March 7, 1986. Barton — 13 pages. (76)†



### Job Vacancy

Reclassification of job by management without posting first — constitutes creation of a vacancy; job posting necessary; grievance allowed. *Re Hamilton-Wentworth, Regional Municipality of & C.U.P.E., Local 167; union grievance*, February 25, 1986. McCulloch — 6 pages. (77)

### Lay-off

Bumping — implementation; reasonable for grievor to have assumed new duties immediately; grievance allowed. *Re Sklar-Peppler Inc. & Upholsterers' International, Local 50; Deveaux grievance*, February 27, 1986. Kennedy — 10 pages. (78)

Existence of shortage of work — real shortage of work; grievance dismissed. *Re Northern Telecom Canada Limited & U.A.W., Local 1915; group grievance*, March 18, 1986. Weatherill — 8 pages. (79)

Notice — failure to give advance notice of lay-off to departmental stewards alleged; not established; advance notice of lay-off can occur any time up to time employees actually leave plant on lay-off; grievance dismissed. *Re National Steel Car Limited & United Steelworkers, Local 7135; McAvella grievance*, March 5, 1986. Barton — 3 pages. (80)†

Notice — notice did not have to be over working days, and weekend notice allowed; grievance dismissed. *Re Benwind Industries & United Steelworkers, Local 5338; policy grievance*, March 18, 1986. T. Jolliffe — 20 pages. (81)†

Notice of lay-off — first notice to all employees constitutes advice to grievor his job may be in jeopardy; grievor not on initial list, but exercise of bumping rights by senior employees caused grievor to be laid off; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 1915; MacKenzie grievance*, March 4, 1986. Weatherill — 10 pages. (82)

### Leave of Absence

Personal leave — reason for absence only urgent or compelling where event could not proceed in absence of employee; approach not in compliance with collective agreement; employer fettering its own discretion. *Re Sudbury District Roman Catholic Separate School Board & Branch Affiliate of the Ontario English Catholic Teachers' Association; Belille, Martel, McNab, Worms grievances*, March 7, 1986. Saltman — 9 pages. (83)

Personal leave — request for leave to go on vacation before vacation credits exhausted; unfair to allow employees to preserve vacation entitlements so as to deprive less senior employees of vacations in the summer months. *Re St. Thomas-Elgin General Hospital & London and District Service Workers, Local 220; Meredith and Cook grievances*, March 12, 1986. Majority: Devlin, Paszkowski; dissent: Solberg — 12 pages. (84)

### Management Rights

Absentee control — company requiring medical certificates for every absence after seven absences; control program is in violation of the collective agreement; grievance allowed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Williams, Spratt grievance*, February 25, 1986. Burkett — 18 pages. (85)\*

Policy memo re medical/dental appointments and hours of work — no individual grievances; memo misleading but no evidence of application in violation of collective agreement; memo ordered withdrawn as written. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; union grievance*, March 7, 1986. Brent — 10 pages. (86)

Reasonableness of employer rules — waitresses required to make up cash shortages when no opportunity to verify amounts and others had access to cash; grievance upheld. *Re Crottoli and Hudon Co. Ltd. & R.W.D.S.U., Local 579; L'Heureux grievance*, March 5, 1986. Betcherman — 6 pages. (87)

Rescheduling rest periods — alleged loss of second half shift rest period; rest period must be distinct and separate from lunch period; grievance allowed. *Re Atlantic Packaging Products Limited & Int'l. Woodworkers, Local 2-112; policy grievance*, March 14, 1986. Hunter — 8 pages. (88)†

### Overtime

Cancellation — work of an emergency nature and needing to be performed immediately; work completed before grievor able to start overtime; circumstances beyond employer's control; grievance dismissed. *Re Ault Dairies, Division of Ault Foods Limited & R.W.D.S.U., Local 440; Parent grievance*, March 20, 1986. H.D. Brown — 18 pages. (89)

Distribution — company diverging from long-established procedure in administering Saturday overtime; lost overtime going to employee outside grievor's classification; grievance allowed. *Re Standard Tube Canada Inc. & U.A.W., Local 1965; Day grievance*, January 28, 1986. R.J. Roberts — 12 pages. (90)

Distribution — company fulfilled its obligation by assigning employees who normally work the machines in question and not the grievor; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 27; group grievance*, October 30, 1985. Palmer — 5 pages. (91)

Distribution — geographical parameters — settlement guidelines; matter adjourned. *Re Canada Post Corporation & CUPW; policy grievance*, March 14, 1986. Burkett — 5 pages. (92)

Number of compulsory overtime hours: yearly limit of 100 hours — no weekly limit set out in agreement; grievance dismissed. *Re Alcan Canada Products Ltd. & United Steelworkers, Local 9096, Read grievance*, February 28, 1986. Schiff, Gilmore, Nobes — 5 pages. (93)

### Probationary Employee

Calculation of period — the aggregate number of days worked is the basis for calculation, not calendar days of employment; grievor did not have sufficient time to end probation and not entitled to protection of just cause provisions of collective agreement; grievance dismissed. *Re Dynasty Inn & Hotel, Restaurant Employees; LeRoux grievance*. See (42), *supra*. (94)†

Discharge on last day of probationary period — prior overtime, vacation pay do not extend time worked; immediate knowledge of immediate termination prior to end of shift; probationary period not over; grievance not arbitrable. *Re Electro Senic Inc. & United Steelworkers, Raj grievance*, March 7, 1986. Betcherman — 5 pages. (95)†

Entitlement to holiday pay — any employee who was not paid by reason of probationary status shall receive payments (or day in lieu) accordingly; grievance upheld. *Re St. Raphael's Nursing Home Ltd. & London and District Service Workers, Local 220; policy grievance*, December 31, 1985. E.B. Jolliffe, Walsh, Graham — 16 pages. (96)

Transfer into bargaining unit — employee discharged as probationary; held the probation period to only time worked while in bargaining unit; discharge upheld as employee relied on reasonable criteria and no evidence of arbitrariness or discrimination; grievance denied. *Re Dynasty Inn & Hotel and Restaurant Employees, Local 280; LeRoux grievance*, March 20, 1986. Dunn — 5 pages. (97)†

### Procedure

Particulars: pre-hearing disclosure requested — grievance involving multiple allegations; details demanded overly onerous; preliminary objection dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; union grievance*, March 5, 1986. McKechnie — 12 pages. (98)†

### Promotion

Qualifications — ability to handle existing program of inventory control and attitude to perform job possessed by grievor; grievance allowed. *Re S.A. Armstrong Ltd. & United Steelworkers, Local 6917; Glover grievance*, March 5, 1986. Baum — 10 pages. (99)

Qualifications — academic requirement of secondary school graduation not established as reasonable requirement relevant to ability to perform job duties; re-posting directed; grievance allowed in part. *Re Ottawa Board of Education & Ottawa Board of Education Employees; Wylie grievance*, March 14, 1986. Kates, Chodos, Henderson — 13 pages. (100)

Qualifications — grievor not satisfying management's qualifications; employer's requirements fair; grievance dismissed. *Re Vaughan, Corporation of the Town of & C.U.P.E.; Nolan grievance*, March 25, 1986. Betcherman — 10 pages. (101)†

Qualifications — onus on grievor to establish relative ability satisfied; seniority therefore not properly considered; grievance allowed. *Re London Public Utilities Commission & C.U.P.E., Local 4; Lennox grievance*, March 14, 1986. Lerner — 12 pages. (102)†

Qualifications — senior employee grieves granting of job to external applicant — competition clause; grievor not equal to skill and ability; grievance dismissed. *Re Peel Memorial Hospital & O.N.A.; des Vignes grievance*, March, 1986. E.B. Jolliffe — 3 pages. (103)†

### Retirement

Compulsory retirement at age 65 — employer having right under collective agreement. *Re Hammant Car and Engineering Ltd. & United Steelworkers, Local 8179; Jaffray grievance*. See (9), *supra*. (104)†

### Scheduling of Work

Past practice of assigning full-time nurses to permanent shift — during negotiations amendments withdrawn on basis that scheduling would be discussed by joint committee and language of agreement remain unchanged; forbearance to refer matter to interest arbitration constituting detrimental reliance; employer estopped from placing nurses on rotation; grievance allowed. *Re Freeport Hospital & O.N.A.; group grievance*, March 21, 1986. E.B. Jolliffe — 31 pages. (105)†

### Seniority

Accrual during sick leave — collective agreement does not specifically deny but specifically denied in other circumstances; reasonable to assume intention to allow accrual; grievance allowed. *Re Uniflex Packaging of Canada Ltd. & United Brewery Workers, Local 326; Busby grievance*, March 10, 1986. Egan — 7 pages. (106)†

Calculation — grievor's status changed from probationary to permanent teacher — no specific dates on probationary contract; grievor entitled to full year seniority instead of half a year; grievance allowed. *Re Scarborough, Board of Education for the City of & Ontario Secondary School Teachers' Federation, District 16; Libman grievance*, March 14, 1986. Majority: Freedman, Solberg; dissent: Saxe — 25 pages. (107)

Transfer into bargaining unit — reciprocal agreement between unions to restrict seniority rights; collective agreements silent on issue; transferee given full credit. *Re Ontario Hydro & C.U.P.E., Local 1000; union grievance*, November 5 and 25, 1985. Majority: Burkett, Abbott; dissent: Vincer — 13 pages. (108)

Vacancy in lower classification posted — seniority not applicable; grievance dismissed. *Re Alliance Cannery Ltd. & Soft Drink Workers' Joint Local Executive Board of Ontario; Wilding grievance*, January 2, 1986. R.J. Roberts — 6 pages. (109)

### Sick Leave

Calculation of deduction of sick leave credits for short-term illness — past practice prevails over literal interpretation; deduction on one-to-one basis for illness up to three days, thereafter upon triggering of insurance plan, deduction made proportionate to employer's contribution to wages; grievance allowed. *Re London and District Association for the Mentally Retarded & O.P.S.E.U.; Zeich grievance*, March 21, 1986. McLaren — 9 pages. (110)

Certification of absence due to illness — chiropractor not accepted as a doctor by management; unreasonable; grievance allowed. *Re Carousel Inn (484307 Ontario Inc.) & Hotel and Restaurant Employees, Local 280; union grievance*, March 10, 1986. Wilson — 9 pages. (111)†

Forced early retirement — grievor unable to work due to injuries incurred during the course of his employment; grievor requesting to use up sick leave credits then retire voluntarily; grievor not entitled to receive sick leave while on Workers' Compensation; grievance dismissed. *Re Thunder Bay, Board of Commissioners of Police for the City of & Thunder Bay Police Association; Greig grievance*, February 28, 1986. Aggarwal — 31 pages. (112)

Shift reduced when grievor returned to work after illness — grievor not missing scheduled work through illness; grievance dismissed. *Re Metropolitan Toronto Library Board & C.U.P.E., Local 1582; Shamsheer grievance*, March 13, 1986. Majority: Brent, Gatten; dissent: Berry — 9 pages. (113)

### Technology Change

Technological change alleged — budgetary cut-backs the operative cause of lay-offs; grievance dismissed. *Re Canadian Broadcasting Corporation & C.U.P.E., Broadcast Bargaining Units (Office and Professional Unit); union grievance*, March 12, 1986. M. Picher — 37 pages. (114)



### Union Officials

Super-seniority — preferred seniority status accorded supervisors taking precedence over preferred status for designated union personnel; grievors not improperly laid off; grievances denied. *Re National Steel Car Limited & United Steelworkers, Local 7135; Archer et al grievance, March 5, 1986. Verity — 14 pages. (115)*

Super-seniority — preferential seniority on lay-off subject to qualifications for available work; grievor physically incapable of doing work available; grievance dismissed. *Re National Steel Car Limited & United Steelworkers, Local 7135; Kizul grievance, March 6, 1986. Barton — 8 pages. (116)†*

### Vacations

Calculation of entitlement where part-time and full-time employment combined — based on date of hire not number of tours; grievance allowed. *Re Bonnechere Manor & O.N.A.; Breen grievance. See (64), supra. (117)*

### Wages

Cancellation of T.V. program part way through series — agreement requiring completed script to be submitted at the time employer gives notice of change of intent — writer to be fully paid to completion of stage being worked on; grievance dismissed. *Re Canadian Broadcasting Corporation & Alliance of Canadian Cinema, Television and Radio Artists; Sutherland and Lager grievances, February 27, 1986. M. Picher — 24 pages. (118)*

Incentive scheme unilaterally altered by management — changes in mix and percentage requirements not significant enough to allow; collective agreement considered; grievance allowed. *Re Atlas Steel & Independent Canadian Steelworkers; policy grievance, March 3, 1986. Majority: Gorsky, Smeaton; dissent: Newbrough — 32 pages. (119)*

Merit progression — grievor failing on attitude evaluation aspect of progression first time but succeeding second time; grievor evaluates fairly; grievance dismissed. *Re NTN Bearing Corporation of Canada Limited & United Steelworkers, Local 8890; Peck grievance, March 12, 1986. Kennedy — 10 pages. (120)*

Supplemental Unemployment Benefit — denial of short week benefits to employees rehired; supplemental unemployment benefit coverage, being unqualified, must refer to same series of benefits in collective agreement; grievance dismissed. *Re International Harvester Company of Canada Ltd. & U.A.W., Local 127; policy grievance, January 7, 1986. Palmer — 8 pages. (121)*

### Welfare Plans

Death benefit — beneficiary to be paid a sum equal to two times salary rather than one and a half; breach of collective agreement; grievance allowed. *Re University of Windsor & C.U.P.E., Local 1001; Buratto grievance, March 17, 1986. Brent — 20 pages. (122)*

Dental plan — substantial increases in dental charges and grievors paying up to 75 percent; collective agreement states 50 percent paid by both employee and employer; premiums payable by both parties to be adjusted upwards to correspond to increased cost; grievance upheld. *Re St. Raphael's Nursing Homes Ltd. & London and District Service Workers, Local 220; policy grievance. See (96), supra. (123)*

### Work Assignment

Assistant foreman position eliminated — foreman supervising directly; not violation of collective agreement; grievance dismissed. *Re Collingwood Shipyards & United Steelworkers, Local 6320; Dynes grievance, February 11, 1986. Mitchnick — 11 pages. (124)*

Distribution of work within the bargaining unit — union alleges new job merely amalgamation of old jobs; experimentation with new methods within management's rights; new work not necessary for a new job; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; policy grievance, March 6, 1986. Mitchnick — 19 pages. (125)†*

Job overlap between unions — overlaps not protected by collective agreement, grievance dismissed. *Re Sudbury Memorial Hospital & C.U.P.E., Local 161; policy grievance, March 11, 1986. Knopf — 17 pages. (126)†*

Structural reorganization of operations — no new positions created; collective agreement does not prohibit; within management's rights; grievance dismissed. *Re Norfolk Board of Education & Ontario Secondary School Teachers' Federation, District 47; policy grievance, March 3, 1986. Majority: McKechnie, McCleery; dissent: McNeil — 13 pages. (127)*

Temporary assignment of employee to different machine — training opportunities not restricted to situations of lay-off or promotion; grievance dismissed. *Re Ault Dairies, Division of Ault Foods Ltd. & Milk and Bread Drivers, Local 647; policy grievance, March 18, 1986. Majority: MacDowell, Abbass; dissent: Barclay — 14 pages. (128)*

Timeliness of notice of instructional assignment — grievor notified of as many aspects of assignment as possible to communicate in September; final details of summer assignment communicated in January; notification in reasonable time to allow preparation or pursue claim of inequitable assignment; grievance dismissed. *Re Algonquin College & O.P.S.E.U.; Boisson grievance, March 18, 1986. Majority: Brent, Shields; dissent: McManus — 13 pages. (129)*

Training duties — previously performed by those in same classification as grievor; grievance dismissed. *Re Dominion Chain Inc. & I.A.M., Local 1927; Bell grievance, March 3, 1986. Brent, Eastham, Solberg — 9 pages. (130)*

Transfer of part of cleaning work done by grievors to other shifts of machine operators — grievors suffered no financial losses; change produced savings to company; grievance dismissed. *Re General Foods Inc. & U.F.C.W.U., Local 1230; Denny, Thackaberry, Middleton grievances, November 1, 1985. Majority: Palmer; did not concur or dissent: Hetz, Stewart — 9 pages. (131)*

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# Monthly Bulletin



Ontario Ministry of Labour

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Office of Arbitration as a service to  
persons involved in labour-management  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1981, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of April, 1986. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Denial of annual salary increment triggered by unsatisfactory performance appraisal constituting disciplinary sanction imposed to induce compliance with employer's standards of conduct — denial of increment arbitrable. *Re The Children's Aid Society of the Regional Municipality of Waterloo & O.P.S.E.U., Local 246; Schreiber grievance*, March 26, 1986. Majority: Knopf, Herbert; dissent: Noonan — 18 pages. (1)



Request under S.45 — grievor failed to meet statutory requirement giving access to expedited arbitration procedure; grievance dismissed. *Re Gencab of Canada Ltd. & U.E., Local 520; Crichton, Funderburg grievances*, April 22, 1986. Davis — 6 pages. (2)†

Time limits — employer failed to refer matter to statutory expedited arbitration pursuant to S.45 *Labour Relations Act* within 30 days of when grievance brought to its attention or before last date for referral under collective agreement — untimely; grievance inarbitrable. *Re Ottawa-Carleton, Regional Municipality of & C.U.P.E., Local 503; Poaps grievance*, April 8, 1986. Stanley — 12 pages. (3)†

Wage rates — not specified in collective agreement; grievance dismissed. *Re Hillel Lodge (Ottawa Jewish Home for the Aged) & I.U.O.E., Local 796; Foisy grievance*, April 25, 1986. Stanley — 8 pages. (4)†

### Bargaining Unit

Quality control inspectors having community of interest with production workers since majority of time spent working in production — inclusion ordered; grievance allowed. *Re Ontario Store Fixtures Inc. & U.S.W.A., Local 5338; policy grievance*, April 3, 1986. Barton — 7 pages. (5)†

### Bereavement Leave

Common-law spouse of sister — list of eligible relationships in collective agreement not exhaustive; grievances upheld. *Re Great Northern Apparel Inc. & Amalgamated Clothing and Textile Workers, Local 1136; Kyer, Jean-Louis grievances*, April 14, 1986. Thorne — 12 pages. (6)†

### Board of Arbitration

Death of employer nominee — jurisdiction not lost by reason of death of a nominee; employer entitled to appoint replacement; if no appointment majority may proceed. *Re Scarborough Public Utilities Commission & Utility Workers of Canada, Local 1; Finley grievance*, March 18, 1986. Majority: Weatherill; dissent: McManus — 17 pages. (7)\*

Interest award implementation — interpretation of agreement awarded within jurisdiction of rights arbitrator under the Act; grievance allowed. *Re St. Joseph's Hospital, Hamilton & O.N.A.; policy grievance*, March 26, 1986. E.B. Jolliffe — 24 pages. (8)†

Jurisdiction to apply *Charter of Rights and Freedoms* — collective agreement not law under the *Charter of Rights and Freedoms* making it unnecessary to consider substantive freedoms union claims violated; no jurisdiction since probationary employees expressly excluded from unjust dismissal protection. *Re Mohawk College & O.P.S.E.U.; Ennis grievance*, March 26, 1986. Majority: Samuels, Wright; dissent: Robbins — 16 pages. (9)\*

Jurisdiction to award interest — requirement that arbitrators provide final and binding decision clearly implies that interest part of process; appropriate situation to award interest. *Re Sheridan College & O.P.S.E.U.; Kolisnyk grievance*, August 19, 1985. Palmer; dissent: Courtney; addendum: Kaufman — 27 pages. (10)

### Classification

Changes in job — not enough changes to justify change in classification; grievance dismissed. *Re The Algoma Steel Corporation & U.S.W.A., Local 2251; union grievance*, April 4, 1986. Majority: Brent, Forbes; dissent: Moreau — 18 pages. (11)

Effect of arbitration award issued subsequent to lateral transfer at time effected — award upgraded former position; no red-circling of wage rate after transfer; subsequent arbitration award not affecting classification of former position; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Harasti grievance*, April 11, 1986. P.C. Picher — 19 pages. (12)

Job content changed during period of staff reduction — job not changed significantly; company not required to negotiate position; grievance dismissed. *Re Ferranti-Packard Transformers Ltd. & U.S.W.A., Local 5788; union grievance*, April 14, 1986. Joyce — 9 pages. (13)

Provision for annual reclassification provides for progression within job designation and not automatic or near-automatic job promotion — grievance dismissed. *Re Scarborough Public Utilities Commission & Utility Workers of Canada, Local 1; Finley grievance*, April 7, 1986. Weatherill; did not concur: Gray; dissent: McManus — 16 pages. (14)

Reduction of classification — employees in certain classifications to remain there even if unable to obtain tickets of certification; employee who lost certification not to have classification reduced; grievance upheld. *Re Unifin International of Keeprite Inc. & U.A.W., Local 27; policy grievance*, February 5, 1986. Palmer — 6 pages. (15)†

### Contracting Out

Agency nurses working as unit supervisors — emergency established; grievance dismissed. *Re Kennedy Lodge Nursing Home & O.N.A.; policy grievance*, April 7, 1986. T.A.B. Jolliffe — 36 pages. (16)†

Assignment of bargaining unit duties to independent security firm — application of traditional control test and its variation, the organization test, establishes guards employees of company doing work of bargaining unit; grievance allowed. *Re Maple Leaf Mills Ltd. & Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; policy grievance*, April 10, 1986. Devlin — 30 pages. (17)\*

Past practice of using combination of contractors and bargaining unit employees during annual refit — contrary to agreement if work assigned to contractors was normal work of employees and would have deferred or averted later lay-off; grievance allowed. *Re BCL Canada Inc. & Amalgamated Clothing and Textile Workers, Local 1332; policy grievance*, April 7, 1986. Little — 18 pages. (18)

Prohibition against outside contractors performing routine manual store-work not precluding contracting out of occasional stripping and waxing of floors; grievance dismissed. *Re Dominion Stores Limited & Retail, Commercial and Industrial Union, Local 206; Hargraves grievance*, September 3, 1985. Majority: Palmer, White; dissent: Rudrum — 9 pages. (19)

Repair of storage tanks awarded to outside company — bargaining unit employees alleged by employer to be lacking in skills and speed and to be more expensive; employer acting honestly but greater consultation with union would have been more diplomatic; grievance dismissed. *Re Falconbridge Limited & Sudbury Mine, Mill and Smelter Workers, Local 598; union grievance*, March 27, 1986. Majority: Brunner, Valin; dissent: McIntyre — 28 pages. (20)



**Damages**

Breach of settlement — employer breached grievance procedure; directed to comply with settlement; damages paid equal to hours grievor would have worked had settlement been implemented; grievance allowed. *Re Empire Inn & R.W.D.S.U., Local 582; union grievance*, April 4, 1986. T.A.B. Jolliffe — 7 pages. (21)†

Compensation after reinstatement by employer — grounds of discharge for innocent absenteeism established; no basis for consideration of back pay between time of discharge and decision to reinstate; reinstatement negates discharge and termination letter must be removed from personnel file; grievance partially allowed. *Re Canada Wire and Cable Limited & U.E., Local 521; Khairia grievance*, April 16, 1986. Joyce — 8 pages. (22)†

**Demotion**

Disciplinary demotion because absent from work while on union business — no justification for disciplinary action. *Re Lecours Lumber Company Ltd. & Lumber and Sawmill Workers, Local 2995; Roy grievance*, March 26, 1986. Majority: H.D. Brown, Fyshe; dissent: Paulin — 74 pages. (23)

Non-disciplinary demotion — grievor unable to get along with subordinates; not established that disciplinary motive; grievance denied. *Re Ottawa Board of Education & Ontario Secondary School Teachers' Federation, District 26; Parai grievance*, April 3, 1986. Kates, Dyson, Chodos — 51 pages. (24)

Removal from training program — grievor not obtaining passing mark on test; company not acting from improper motive; grievance dismissed. *Re American Can Canada Inc. & Hamilton Can Workers, Local 354; Vacheresse grievance*, April 4, 1986. Majority: Weatherill, Herlihy; dissent: Fraser — 17 pages. (25)

**Discharge**

Absenteeism — absences due to illness beyond grievor's control; received no notice that job was in jeopardy prior to discharge and should have received one due to his illness; grievor to be reinstated but no award is made as to damages. *Re Mount Sinai Hospital & O.N.A.; Gudinskas grievance*, February 25, 1986. Majority: Rayner, Anand; dissent: Boettcher — 15 pages. (26)

Absenteeism — extensive history of innocent absenteeism; employee put on notice; no change in pattern or probability of change; integral condition of employment could not be met; grievance dismissed. *Re Gaines Pet Foods Corp. & U.F.C.W.U., Local 1230; Black grievance*, March 27, 1986. Solomatenko — 12 pages. (27)†

Absenteeism — failure to notify employer of absence from work and reason for more than three consecutive days causing loss of seniority; as probationary employee grievor subject to lower standard for just cause; grievor unable to provide reasonably regular attendance; grievance dismissed. *Re Cambridge Brass & U.S.W.A., Local 4045; Corriveau grievance*, March 31, 1986. Kruger — 10 pages. (28)

Absenteeism — grievor conditionally reinstated for one year; absenteeism not to exceed department average; grievor discharged five months prematurely; absences to be totalled at the end of the year; grievance allowed. *Re Loblaw's Limited (Transport Division) & U.F.C.W.U., Local 1000A; Awad grievance*, March 26, 1986. McLaren — 11 pages. (29)

Abuse of patient — lesser penalty not appropriate; grievance dismissed. *Re Providence Villa and Hospital & C.U.P.E., Local 1590; Dyett grievance*, April 23, 1986. Langille — 24 pages. (30)†

Assault — in absence of independent witnesses, corroborating evidence and where both versions of incident equally out of harmony with the preponderance of probabilities, the onus on employer to prove assault not satisfied; grievance allowed. *Re Spruce Falls Power and Paper Co. Ltd. & Canadian Paperworkers, Local 89; Truchon grievance*, April 16, 1986. Majority: Swan, Paxton; dissent: Ronson — 11 pages. (31)

Culminating incident — absence from work without leave, failure to give advance notice of absence and failure to justify absence on return to work established; poor past record despite counselling and progressive discipline; grievance dismissed. *Re Stelco Pipe and Tube Company, Page Hersey Works & U.E., Local 523; Carrington grievance*, April 16, 1986. Davis — 14 pages. (32)†

Drinking alcohol and sleeping at work — allegations established as part of continuing pattern of misconduct despite progressive discipline; grievor's version lacking credibility; misconduct disruptive to co-workers; grievance dismissed. *Re Ramada Renaissance Hotel & Hotel Employees, Restaurant Employees, Local 75; Hakeen grievance*, March 30, 1986. T.A.B. Jolliffe — 42 pages. (33)†

Failure to notify company that would not be returning to work from sick leave at originally planned date — no evidence that grievor was so incapacitated that he was unable to notify company for a month as to why he could not return; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 673; Mackenzie grievance*, March 31, 1986. Burkett — 14 pages. (34)

Falsification of medical forms — just cause established; grievance dismissed. *Re Holmes Foundry & U.A.W., Local 456; Trealtout grievance*, April 25, 1986. Samuels — 9 pages. (35)

Falsification of time cards — admission when confronted by superiors; showed remorse; dismissal too severe; suspension of three months substituted; reinstatement without accumulation of seniority; grievance allowed. *Re Prefab Cushioning Products Ltd. & U.E., Local 518; Parrales grievance*, April 9, 1986. T.A.B. Jolliffe — 14 pages. (36)†

Inadvertent exposure of genitals — work record poor; grievor careless and therefore lacking intention to injure the company; eight-month suspension and letter of apology substituted. *Re The Parking Authority of Toronto & Toronto Civic Employees, Local 43; Savard grievance*, March 26, 1986. P. Picher, McDonald, Dixon — 15 pages. (37)

Insubordination and failure to follow safety rules — grievor not acknowledging his errors; longer suspension than usual substituted for discharge. *Re Rio Algom Limited & U.S.W.A.; MacDonald grievance*, April 9, 1986. Tacon — 20 pages (38)

Insubordination: refusal to follow orders — insubordination wilful; grievance dismissed. *Re Westbank-Willock, a Division of Willock Industries Ltd. & U.S.W.A., Local 4696; Watts grievance*, April 18, 1986. O'Shea — 19 pages. (39)



Insubordination — unreliability in carrying out duties and responsibilities coincided with many personal problems and eventual break-up of marriage; grievor worked fourteen years and record was more than satisfactory; grievor to be given a last chance; reinstated with no compensation and period between discharge and receipt of decision to be recorded as suspension without pay; grievance allowed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Bawden grievance*, March 14, 1986. Majority: Kates, Solberg; dissent: Atkinson — 30 pages. (40)

Intoxication from consumption of alcohol while in control of company vehicle alleged — drinking while on duty established; truck drivers subject to higher duty of care; grievance dismissed. *Re Bristol Myers Products (Canada) Limited & Teamsters, Local 1302; Daly grievance*, December 18, 1985. Majority: Rayner, Rundle; dissent: Phillips — 22 pages. (41)

Licence of truck driver suspended for alcohol related offences — good employee in previous 15 months; no other jobs for grievor; three offences too many; grievance dismissed. *Re Tricil Limited & C.U.P.E., Local 1045; King grievance*, April 2, 1986. Majority: Kennedy, McDermott; dissent: Davidson — 9 pages. (42)

Marijuana consumption and purchase on company property — disciplinary record clear; one-month suspension substituted. *Re Federal Pioneer Limited & Communications, Electronic, Electrical, Technical and Salaried Workers of Canada, Local 521; Lawlor grievance*, April 7, 1986. Weatherill, Lumas, Hutchens — 12 pages. (43)

Patient abuse: grievor alleged to have kissed and fondled psychiatric patient — grievor's version of events not credible; cause for discipline established; some doubt as to waiver by grievor of his right to representation during discussions with management relating to discipline; compensation without reinstatement ordered. *Re Ottawa Civic Hospital & C.U.P.E., Local 576; Sectayah grievance*, March 17, 1986. Emrich — 27 pages. (44)†

Probationary employee — discharge not discriminatory; isolated remark not indicative of supervisor's motives; termination of probationary employee justified. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Nsiah-Yeboah grievance*, April 24, 1986. O'Shea — 101 pages. (45)

Probationary employee — grievance filed in a timely fashion although dismissal of probationary employee is not contemplated as being a subject of arbitration, therefore, timeliness is actually irrelevant; grievance dismissed. *Re Sault College & O.P.S.E.U.; Jewiss grievance*, October 18, 1985. Majority: Palmer, Gray; dissent: Herbert — 10 pages. (46)

Probationary teacher — grievor informed of employer's concerns about work performance; termination not motivated by bad faith; grievance dismissed. *Re Cambrian College & O.P.S.E.U., Best grievance*, April 7, 1986. Majority: Brent, Hoddle; dissent: McManus — 9 pages. (47)

Procedural requirements — right to presence of union steward when letters of discipline delivered a substantive right which was not waived; employer's action a nullity; reinstatement ordered; grievances upheld. *Re Canadian General Tower Limited & United Rubber Workers, Local 292; Fiander, Oslansky grievances*, April 18, 1986. T.A.B. Jolliffe — 33 pages. (48)†

Quit alleged because of failure to return to work after educational leave — loss of qualifications for work deemed resignation; resignation must be voluntary act; not sufficient grounds to justify dismissal; grievance upheld. *Re Wardair Canada Inc. & Canadian Air Line Flight Attendants Association; McAnany grievance*, March 31, 1986. Simmons — 20 pages. (49)

Theft: allegation that employee misappropriated company goods — inefficient record keeping; employer failed to establish deliberate misappropriation of goods; reinstatement ordered with full compensation and no loss of seniority. *Re Lever Detergents Limited & Teamsters, Local 132; Owens grievance*, April 8, 1986. Solomatenko — 20 pages. (50)†

Theft alleged — company tools found in grievor's home; grievor unable to provide explanation; grievance dismissed. *Re General Motors of Canada Limited & U.A.W., Local 27; Rivard grievance*, October 25, 1985. Palmer — 4 pages. (51)

Theft alleged — grievor receiving substantial cheque belonging to employer as result of employer's error; grievor knowingly using money for own purposes; grievor's actions understandable in that some of that money would eventually go to him; suspension substituted for discharge. *Re Maple Leaf Monarch Company & U.A.W., Local 195; Cook grievance*, March 25, 1985. Palmer — 8 pages. (52)

Theft of funds tendered by customer making purchase alleged — established; discharge upheld; grievance dismissed. *Re Loblaw's Supermarkets Limited & U.F.C. W.U., Local 1000A; Galka grievance*, April 10, 1986. Weatherill — 8 pages. (53)

Unauthorized absence from work area — weight of evidence supports employer version of events; discharge warranted in view of record of 20 infractions since 1980; grievance dismissed. *Re Consumers Distributing Company Limited & Teamsters, Local 419; Williams grievance*, April 23, 1986. Dunn — 4 pages. (54)

Unjustified absences — cumulative discipline resulting in disciplinary discharge; grievor claimed he had many personal problems; company offered some assistance which grievor did not take; grievor's case reviewed, appropriate disciplinary response was discharge; grievance dismissed. *Re Stelco Inc. Lake Erie Works & U.S.W.A., Local 8782; Wagenar grievance*, March 27, 1986. McLaren — 12 pages. (55)

Untrustworthiness — unsatisfactory performance of duties not established; grievance allowed. *Re The Hotel Selby & Int'l. Beverage Dispensers' and Bartenders' Union, Local 280; Carmichael grievance*, April 1, 1986. Adamson — 12 pages. (56)†

Work performance — unable to perform job; grievor given sufficient notice; grievance dismissed. *Re Peel Board of Education & C.U.P.E., Local 1628; Lasota grievance*, April 15, 1986. Majority: Burkett, Rogers; dissent: Maddison — 23 pages. (57)

### Discipline

Absence without leave: failure to notify company of intent not to return after temporary lay-off; grievor's job critical to entire plant operation; evidence shows grievor made no attempt to contact company; suspension upheld; grievance dismissed. *Re Waterloo Spinning Mills Ltd. & U.F.C. W.U., Local 1984; Welsh grievance*, April 14, 1986. Baum — 7 pages. (58)†



Altercation with customer — customer illogical and board sides with grievors based on testimony of third uninvolved employee; grievors were courteous at all times and actions did not warrant suspension; to be paid lost salary and benefits and suspension taken off their record; grievance allowed. *Re New Dominion Stores Inc. & R.W.D.S.U., Local 414; Mercer and Bergeron grievance*, April 11, 1986. Foisy — 12 pages. (59)†

Dishonesty: fraudulent claim for sick pay — discharge upheld as reasonable where employee claimed to be ill, left work and then completed a shift with second employer; mitigating factors outweighed by nature of conduct, attempts to mislead employer and short time period between return from a suspension and incident; grievance dismissed. *Re Labatt's Ontario Breweries Ltd. & Brewery, Malt and Soft Drink Workers, Local 304; Lee grievance*, April 22, 1986. Freedman — 32 pages. (60)

Insubordination: absence of cooperation with employer when grievor found in incriminating circumstances; two-day suspension too harsh; past record unblemished; written warning substituted; grievance allowed in part. *Re VS Services Limited at Salvation Army Grace Hospital & S.E.U., Local 204; Smith grievance*, April 21, 1986. Baum — 6 pages. (61)†

Insubordination and leaving work without permission — leaving work early necessitating written reprimand; disciplinary letter to be changed; grievance allowed in part. *Re Pall (Canada) Ltd. & E.C.W.U., Local 34; Clarke grievance*, April 7, 1986. M. Picher — 12 pages. (62)

Insubordination: refusal to proceed with normal work — grievor failing to prove his physical well-being was endangered; grievance dismissed. *Re Ferranti-Packard Transformers Ltd. & U.S.W.A., Local 5788; Lacas grievance*, April 10, 1986. E.B. Jolliffe — 33 pages. (63)†

Insubordination: refusal to work overtime — grievance allowed in part. *Re Collingwood Shipyards & U.S.W.A., Local 6320, union grievance*, March 30, 1986. Boscarior — 14 pages. (64)†

Failure to conform to standard procedures — permission granted to leave crew-mates and failure to rejoin in time due to external circumstances; obligation on grievor to communicate; thirty-day suspension reduced to one week. *Re Worldways Canada Limited & Canadian Air Line Flight Attendants Association; Nicholas grievance*, April 2, 1986. Kennedy — 10 pages. (65)

Insubordination; refusal of order to work — mitigating circumstances; reduction in penalty. *Re Ottawa General Hospital & C.U.O.E., Local 111; Kakadia grievance*, April 15, 1986. Fraser — 3 pages. (66)†

Insubordination: refusal to obey instructions and leaving plant early — characterization of actions as minor insubordination reasonable; application of demerit system and resulting five-day suspension upheld; grievance dismissed. *Re Infasco Nut & U.S.W.A., Local 9015; Watts grievance*, April 3, 1986. Barrett — 9 pages. (67)†

Insubordination: refusal to obey supervisor's instructions and to attend investigation meeting — possession of alcohol with intent to consume not proven; insubordination relatively minor; one-day suspension substituted for five-day suspension. *Re Carling O'Keefe Breweries of Canada Limited & United Brewery Workers, Local 325; Lasruk grievance*, April 4, 1986. McLaren — 11 pages. (68)

Insubordination: refusal of overtime assignment due to concern for safety hazard — employee can put conditions on agreement to work overtime; grievance upheld. *Re Courtice Steel Limited & U.S.W.A., Local 8635; Kroonenberg grievance*, April 2, 1986. Boscarior — 5 pages. (69)†

Sleeping on job, failure to carry out work assigned and presence in unauthorized area alleged — only sleeping on job not established; two-day suspension upheld with amendment to disciplinary notation; grievance allowed in part. *Re Denison Mines Limited & U.S.W.A., Local 5762; Rose grievance*, March 27, 1986. M.G. Picher — 19 pages. (70)

Suspension following verbal warning — company re-opened the case to give grievors a two-day suspension; suspension not justifiable; should be removed from records and grievors compensated for losses; grievance allowed. *Re Pure Metal Galvanizing, Division of PMT Industries Ltd. & Int'l. Molders and Allied Workers, Local 28; Kissoon and Wallace grievance*, March 31, 1986. Burkett — 11 pages. (71)

Theft — preliminary question of ownership of property not established; duty to provide reasonable explanation does not therefore arise; three-day suspension removed; written warning substituted on related incident of breach of company rules; grievance partially allowed. *Re St. Joseph's Hospital (Hamilton) & C.U.P.E., Jansen grievance*, April 2, 1986. Boscarior — 8 pages. (72)†

Work performance: inadvertent and occasional errors by ill-trained employee — no comparison with performance of others; employer failed to convince on evidence that grievor was at fault; grievance upheld. *Re Dimarcantonio Industries Inc. & Canadian Textile and Chemical Union; Lee grievance*, April 18, 1986. Hunter — 9 pages. (73)†

### Employment Status

Independent contractor status alleged — not established on evidence; grievance allowed. *Re St. Raphael's Nursing Home & London and District Service Workers, Local 220; policy grievance*, April 8, 1986. Hunter — 7 pages. (74)†

### Estoppel

Introduction of new classification — association withdrawal of proposals related to new classification not representation that employer free to assign duties of another position in guise of that classification; collective agreement provides for classification but duties and responsibilities must be of that classification; preliminary objection dismissed. *Re London, Board of Education for the City of & London Women Teachers' Association; policy grievance*, April 21, 1986. Weatherill — 11 pages. (75)

### Evidence

Onus of proof — on balance of probabilities, onus on employer to establish a failure to record information in duty log not established; written warning removed from record; grievance allowed. *Re Scarborough General Hospital & I.U.O.E., Local 796; Wilson grievance*, April 1, 1986. Barrett — 6 pages. (76)†

### Grievance Procedure

Concession of group grievance by company alleged because committee to hear matter at second step not properly constituted according to union — not established; parties obliged to meet and discuss merits of group grievance notwithstanding objections to irregularities or apparent nullities; grievance dismissed. *Re Spar Aerospace Limited & U.A.W., Local 112; group grievance*, April 2, 1986. Barton — 14 pages. (77)†



**Timeliness** — an allegation of a continuing failure to pay union dues, where the collective agreement requires payments on a regular basis; constitutes a continuing grievance; in the alternative, where improper conduct can be characterized as series of individual breaches, reasonable grounds exist for extension of time limits under *Labour Relations Act* s.44(6); preliminary objection to arbitrability dismissed. *Re Port Colborne General Hospital & O.N.A.; policy grievance*, April 4, 1986. Majority: Burkett, Anand; dissent: Redford — 15 pages. (78)\*

**Timeliness: three-month delay** — multiple factors considered in exercising discretion under s.44(6) *Labour Relations Act*; nature of grievance important but does not outweigh other factors relating to length, nature of delay and lack of employer awareness of concern; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital Inc. & O.N.A.; policy grievance*, April 10, 1986. Majority: Devlin, Clarkson; dissent: O'Neil — 21 pages. (79)

**Waiver** — failure to raise question of grievance format constitutes waiver of right to object; employer estopped from raising matter at hearing; grievance allowed. *Re Stratford General Hospital & O.N.A.; policy grievance*, March 15, 1986. R.J. Roberts — 8 pages. (80)†

### Health and Safety

**Safety equipment** — company determining special equipment necessary for protection of employees; company's directive for wearing of respirators reasonable; grievance dismissed. *Re Camco Inc. & U.E., Local 550; Edworthy and Matthews grievance*, April 15, 1986. Egan — 10 pages. (81)†

### Holiday Pay

**Qualifying days: lay-offs not included in exemptions;** collective agreement prevails over *Employment Standards Act*; grievance dismissed. *Re Dorr-Oliver Canada Limited & U.S.W.A., Local 4697; group grievance*, March 27, 1986. Majority: Weatherill, Werry; dissent: Nobes — 9 pages. (82)\*

**Qualifying day** — taking of sick leave day for personal reasons not a satisfactory reason so as to entitle employee to payment for preceding paid holidays; grievance dismissed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 673; Ward grievance*, April 4, 1986. Burkett — 10 pages. (83)

### Illness

**Doctor's certificate required after absence of more than one day** — grievor not clearly informed of necessity of note; grievance allowed. *Re Infasco Nut Company, Division of IVACO Inc. & U.S.W.A., Local 9015; Beamish grievance*, April 10, 1986. Wilson — 5 pages. (84)†

**Fitness to return to work** — initial onus on grievor to demonstrate capability satisfied; based on medical evidence company refusal over five months to allow return unreasonable; compensation for wage loss to date of initial request awarded; grievance allowed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; Cowles grievance*, April 8, 1986. Majority: McLaren, Marshall; dissent: Moate — 13 pages. (85)

**Return to work after long absence due to injury** — employer entitled to require complete medical certificate; grievance dismissed. *Re Trailmobile Canada Ltd. & U.A.W., Local 397; Kuchocki grievance*, February 28, 1986. Rayner — 10 pages. (86)

### Job Evaluation

**Job ranking alleged improper by union at labour grade five since on job posting grade 12 was required;** union failed to establish that rating is improper and should be equivalent to gas-weld job with labour grade seven; company was improper in requiring grade 12 but board cannot subscribe that rating should be increased; grievance dismissed. *Re Camco Inc. & U.E., Local 550; union grievance*, March 12, 1986. O'Shea — 14 pages. (87)†

**Job rating system** — while testimony on job duties differed, objective evidence of job description and job posting notice formed basis for assessment of job grade; job rated too low and company directed to raise by one grade; claim for raise of six grades rejected; grievance partially allowed. *Re Camco Ltd. & U.E., Local 550; policy grievance*, April 9, 1986. O'Shea — 23 pages. (88)†

### Job Posting

**Language requirement** — in context of work environment and school board policy need for French-speaking candidate reasonable; job to be reposted with requirements of French speaking in place of bilingual; grievance partially allowed. *Re Stormont, Dundas and Glengarry Board of Education & C.U.P.E., Local 782; policy grievance*, April 4, 1986. Majority: Weatherill, Willis; dissent: Lamoureux — 11 pages. (89)\*

**Qualification** — interviewing tactics unfair; matter to be remitted back to employer for reconsideration; grievance allowed. *Re Kingston General Hospital & C.U.P.E., Local 1974; Welch grievance*, April 9, 1986. Boscarl — 8 pages. (90)†

**Recall** — two jobs posted; grievor not recalled to original job nor placed in posted jobs; extensive analysis undertaken, grievor fifth in scoring; grievor not within the particular bargaining unit and did not have right to recall; company not in violation of collective agreement; grievance dismissed. *Re Falconbridge Ltd. & U.S.W.A., Local 6855; Hennigar grievance*, March 25, 1986. McKechnie — 14 pages. (91)†

**Second bid within year to be for higher classification** — temporary position which becomes permanent an exception; grievance dismissed. *Re Liquid Carbonic Inc. & U.S.W.A., Local 12998; policy grievance*, April 8, 1986. T.A.B. Jolliffe — 9 pages. (92)†

**Vacancy** — job posting initiated in error; no vacancy established; employer entitled to rescind posting; grievance dismissed. *Re Windsor, Board of Education for the City of & C.U.P.E., Local 27; policy grievance*, April 17, 1986. Boscarl — 7 pages. (93)†

### Job Vacancy

**Existence of vacant position** — where employee occupying one part-time classification successfully posted to second, company entitled to assign work in both classifications to that employee; union did not establish vacancy existed in initial classification; grievance dismissed. *Re V/S Services Ltd. & Workers' Union of Queen Elizabeth Hospital; policy grievance*, April 9, 1986. H.D. Brown — 17 pages. (94)

**Transfer within classification** — "vacancy" relates to individual position not total complement within each classification; posting for permanent vacancy required; grievance allowed. *Re Kent County Board of Education & C.U.P.E., Local 2214; policy grievance*, April 1, 1986. Hinnegan — 11 pages. (95)†



**Lay-off**

Bumping rights — surplus teachers able to bump all other teachers in positions of responsibility but not principals and vice-principals. *Re Stormont, Dundas and Glengarry County Board of Education & Ontario Secondary School Teachers' Federation, District 21; policy grievance*, April 23, 1986. Majority: Gorsky, Tenace; dissent: McNeil — 22 pages. (96)

Entitlement to training for available work claimed because lay-off caused by introduction of new method and equipment or curtailment of operations; not established; lay-off caused by completion of seasonal operations; no training requirement; grievance dismissed. *Re Abitibi-Price Incorporated & Lumber and Sawmill Workers, Local 2995; Ducharme grievance*, October 27, 1985. Majority: Palmer, Tait; dissent: Mior — 13 pages. (97)

Notice — declaration of surplus does not trigger application of lay-off provisions of collective agreement in absence of actual lay-off; grievance dismissed. *Re Spar Aerospace Company Ltd. & U.A.W., Local 673; policy grievance*, April 9, 1986. H.D. Brown — 14 pages. (98)

Qualifications — grievor could not do work without training; grievance dismissed. *Re Kendall Canada & U.S.W.A., Local 8505; Spencer grievance*, April 25, 1986. Foisy — 10 pages. (99)†

Qualifications — grievor not able to meet production and quality standards of alternate positions where own job eliminated despite lengthy trial periods; not equal to other potential candidates for lay-off; grievance dismissed. *Re Vogue Brassiere Incorporated & International Ladies Garment Workers; Cordeiro grievance*, April 9, 1986. MacDowell — 15 pages. (100)

Qualifications — grievor temporarily assigned job of cutter in past and performing adequately; job not complex or technical; no jeopardy to general production; grievance allowed. *Re Simmons Limited & U.E., Local 513; Myers grievance*, April 4, 1986. Hinnegan — 6 pages. (101)†

Qualifications — present and immediate ability to do job; formal training period necessary; grievances dismissed. *Re Canada Safeway Limited & U.F.C.W.U., Local 409; Rocco, Smith, MacLeod, Gillis and Rosengren grievances*, March 26, 1986. Davis — 20 pages. (102)†

Return to work — grievors turned down transfer, not entitled to subsequent vacancy; grievance dismissed. *Re Butler Metal Products & U.A.W., Local 1780; eleven grievances*, April 16, 1986. Brent — 10 pages. (103)

**Leave of Absence**

Temporary vacancy due to maternity leave filled by part-time employees outside bargaining unit; breach of terms of collective agreement. *Re Laurentian Hospital & C.U.P.E., Local 131; policy grievance*, April 3, 1986. Kates — 15 pages. (104)\*

Unpaid leave denied because of operational requirements — only restriction on employer's discretion that decision to withhold leave not be unreasonable; grievance dismissed. *Re Carleton University & C.U.P.E., Local 2424; Villeneuve grievance*, April 21, 1986. Frankel — 10 pages. (105)†

**Management Rights**

Rule prohibiting playing of radios at job site — rule reasonable and within competence of management to enact; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A.; Guetle and Milton grievances*, April 18, 1986. Tacon — 17 pages. (106)\*

Violation of job security clause — not supported by management rights clause; declaration of violation. *Re Loblaw's Supermarkets Limited & U.F.C.W.U., Local 486; union grievance*, April 22, 1986. Thorne — 28 pages. (107)†

**Overtime**

Distribution — grievor's experience on machine not extensive, but capable, and given grievor's record employer unreasonable to deny grievor the work; grievor reimbursed the overtime hours he would have worked; grievance allowed. *Re Cornwall, Corporation of the City of & C.U.P.E., Local 234; Bedard grievance*, April 8, 1986. Stanley — 11 pages. (108)†

Entitlement — employee on suspension not offered overtime work; words of collective agreement and past practice of employer resolve ambiguity; grievance dismissed. *Re Webster Manufacturing (London) Limited & International Molders and Allied Workers, Local 49; Baltaire grievance*, December 12, 1985. Palmer — 7 pages. (109)

Entitlement where employee at maximum hours allowed under permit s.20 *Employment Standards Act*; employer not required to offer further hours in violation of Act nor under obligation to seek variation of permit; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 1915; Morgenstern grievance*, April 18, 1986. Kennedy — 9 pages. (110)\*

**Probationary Employee**

Failure to provide union representation at disciplinary hearing does not void discharge — as grievance of discharge precluded by collective agreement only remedy is declaration of employer violation. *Re Spar Aerospace & U.A.W., Local 673; policy grievance*, April 9, 1986. H.D. Brown — 13 pages. (111)

Termination of two employees — seniority does not apply and grievors have no right to insist other probationary employees be laid off ahead of them regardless of hire date; failure of grievors to meet work standard; grievance dismissed. *Re The Board of Governors of Exhibition Place & United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46; Taylor, Pitcher grievance*, April 3, 1986. O'Shea — 23 pages. (112)†

**Procedure**

Adjournment — union request denied where failed to locate grievor; costs and benefits of adjournments must be weighed; grievor had obligation to inform union of whereabouts; grievance withdrawn. *Re Consumers Distributing Company & Teamsters, Local 419; Morissey grievance*, April 17, 1986. Kruger — 6 pages. (113)

**Promotion**

Qualifications — grievor erroneously assessed as lacking managerial initiative for position as non-food manager; skill and qualifications sufficient; as senior employee grievor entitled to first consideration; grievance allowed. *Re Miracle Food Mart (Steinberg Inc.) & U.F.C.W.U., Locals 175 and 633; Bacon grievance*, April 3, 1986. Baum — 18 pages. (114)†

Qualifications — grievor lacked training and experience; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 1530; Rombough grievance*, April 23, 1986. Burkett — 11 pages. (115)

Qualifications — grievor possessing academic qualifications but not experience; no training period provided; grievance dismissed. *Re Domglas Inc. & Aluminum, Brick and Glass Workers International, Local 260; Kalirai grievance*, April 4, 1986. Kennedy — 14 pages. (116)



Qualifications — more senior grievors found lacking in technical knowledge, skill and ability required for position; selection made properly on relevant considerations; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Cordice and Sobek grievances*, March 27, 1986. P.C. Picher — 55 pages. (117)

Qualifications — most senior applicant with threshold ability should get job; grievance upheld. *Re Kendall Canada & U.S.W.A., Local 8505; Dhanda grievance*, April 18, 1986. Stanley — 17 pages. (118)†

Qualifications — preference given seniority in collective agreement conditional on employee having ability relative to other candidates and requisite ability to do job; grievor lacked ability to perform duties and experience to become qualified in a reasonable time period; award to less senior employee reasonable; grievance dismissed. *Re Loblaw's Supermarket Limited & U.F.C.W.U., Local 206; Smith grievance*, March 31, 1986. E.B. Jolliffe — 17 pages. (119)†

Qualification — seniority to prevail where qualifications relatively equal; employer acted in good faith and without discrimination; complied with criteria of collective agreement; grievance denied. *Re Ottawa Civic Hospital & O.N.A.; Pearson grievance*, April 17, 1986. Carrothers — 18 pages. (120)†

Qualifications: use of examination — top candidate successful; no obligation to interview applicants lower on scale; same criteria used for every candidate; grievance denied. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Holder grievance*, April 9, 1986. Brent — 21 pages. (121)

Selection process tainted by perfunctory assessment of grievor's qualifications and bias in favour of successful applicant; matter remitted for reassessment of all applicants; grievance allowed. *Re Thunder Bay, Homes for the Aged (Corporation of the City of Thunder Bay) & S.E.I.U., Local 268; Tabor grievance*, April 22, 1986. Betcherman — 8 pages. (122)†

Trial period — grievor's demotion to former classification after failing to pass the first level of the familiarization and training period was a legitimate move by company and not disciplinary in nature; grievance dismissed. *Re Northern Telecom Canada Ltd. & U.A.W., Local 1915; Victory grievance*, March 25, 1986. Dunn — 6 pages. (123)

### Recall

Company assigning less senior employee to grievor's position — employer not compelled to effect grievor's recall at expense of other employee's lay-off; grievance dismissed. *Re Canron Inc. & International Molders and Allied Workers, Local 28; Naumouski grievance*, April 3, 1986. Kates — 8 pages. (124)

### Scheduling of Work

Shift schedule changes — managerial right to determine schedules subject only to consultation and notice; agreement by union not necessary; hours worked before former schedule not overtime; grievance dismissed. *Re Polygon Industries Ltd. & C.U.O.E.; group grievance*, March 31, 1986. Egan — 6 pages. (125)†

Unilateral implementation of new schedule — operations involved in radial tire production properly placed on new schedule; grievance dismissed. *Re Goodyear Canada Inc. & United Rubber Workers, Local 232; union grievance*, April 2, 1986. Swan — 39 pages. (126)

### Seniority

Bumping rights of excluded personnel into bargaining unit during lay-off: corporation seniority construed as limited to service within bargaining unit only, unless service outside unit for period of less than one year; grievance allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; grievance N-156*, April 14, 1986. M.G. Picher — 63 pages. (127)\*

Extent of seniority rights — cutback in 1982, grievor demoted and not working in proper section to be eligible to fill vacancies; grievance dismissed. *Re Stelco, Hilton Works & U.S.W.A., Local 1005; Smart grievance*, March 21, 1986. Majority: Welling, Dunsmore; dissent: Marshall — 10 pages. (128)

Supervisor — entitled to exercise seniority acquired while in bargaining unit; grievance dismissed. *Re Sterling Drug Ltd. & E.C.W.U., Local 435; policy grievance*, April 16, 1986. Egan — 7 pages. (129)†

### Sick Pay

Denial of claim — grievor unhurt in car accident, but too shaken up to report to work; called work for shift off and not asked to produce medical certificate; grievor's eleventh absence; employer acted in a reasonable way; grievance dismissed. *Re St. Raphael's Nursing Home & London and District Service Workers, Local 220; Gaye grievance*, April 8, 1986. Hunter — 9 pages. (130)†

### Transfer

Temporary transfer — higher rate not appropriate; grievance dismissed. *Re Ingersoll Machine and Tool Co. Ltd. & U.S.W.A., Local 2918; Coleman grievance*, April 14, 1986. O'Shea — 10 pages. (131)

### Union Rights

Entitlement to travel allowance or time off to travel to grievance meetings — employee away from work to attend such meetings and is entitled only to what he would make had he remained at work; company not breaching collective agreement by not allowing employees time off when travelling can be done outside work hours; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Local 1000; policy grievance*, March 14, 1986. Majority: Burkett, Abbott; dissent: Vincer — 19 pages. (132)

Leave of absence for union business rejected by employer — request made on a casual basis; no regular pattern apparent; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Local 5980; Boniferro grievance*, April 15, 1986. Brunner — 8 pages. (133)

### Vacation Pay

Absence due to work-related injury: grievor entitled to accumulated vacation pay; grievance allowed. *Re Golden Manor Home for the Aged (Corporation of the City of Timmins) & C.U.P.E., Local 1140; Dagenais grievance*, April 5, 1986. Dunn — 7 pages. (134)

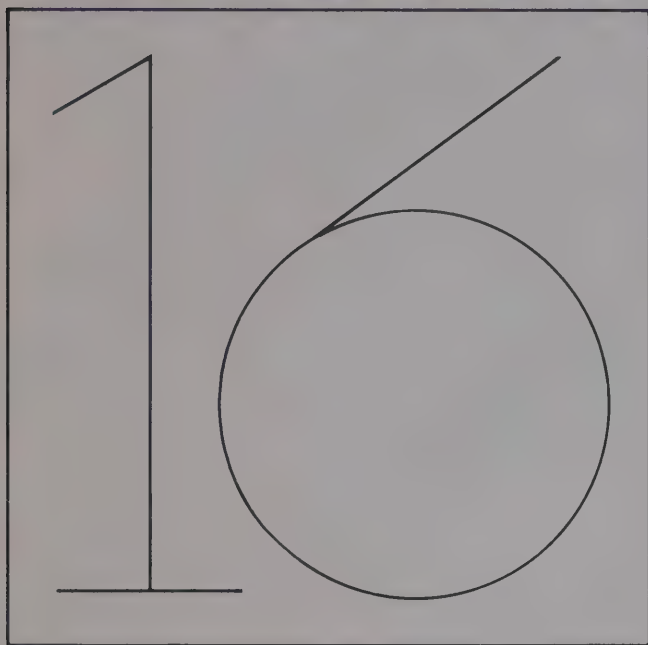
### Wages

Change to base rate of C.O.L.A. — employer not precluded by language of agreement; grievance dismissed. *Re Nordex Explosives Ltd. & U.S.W.A., Local 6409; union grievance*, April 21, 1986. Houston — 6 pages. (135)†

Entitlement to difference between worker's compensation and regular salary — grievor entitled to difference only so long as he is prevented from performing regular work; grievance dismissed. *Re Golden Manor Home for the Aged (Corporation of the City of Timmins) & C.U.P.E., Local 1140; Dagenais grievance*, April 5, 1986. Dunn — 7 pages. (136)

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# Monthly Bulletin



Ontario Ministry of Labour



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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1981, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of May, 1986. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Discharge — collective agreement does not contain any provision imposing limitation on right of employer to discharge employees and Board therefore has no jurisdiction to review matter; grievance dismissed. *Re Corporation of Massey Hall and Roy Thompson Hall & International Alliance Theatrical Stage Employees, Local 58; Radburn and Karlstedt grievances*, April 10, 1986. Majority: Brandt, Earle; dissent: Hulse — 6 pages. (1)

Existence of collective agreement — cause for discipline arising before effective date of collective agreement — subsequent substitution of penalty not giving rise to new cause of action — grievance not arbitrable; interim award. *Re Metropolitan Toronto, Municipality of, & C.U.P.E., Local 79; Scott grievance*, April 29, 1986. Brent — 7 pages. (2)



Failure to promote police constable — regulations under Police Act do not negate collective agreement provisions regarding promotion; jurisdiction of arbitrator not removed by statute; preliminary objection dismissed. *Re Waterloo, Regional Board of Commissioners of Police & Waterloo Regional Police Association; Burnett grievance*, May 13, 1986. Brent — 12 pages. (3)

Individual grievances on same issue abandoned — res judicata and estoppel not precluding arbitrability of policy grievance. *Re Ault Dairies, Division of Ault Foods Limited & Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees; policy grievance*, May 7, 1986. Barrett — 11 pages. (4)\*†

Long term disability plan — terms not incorporated into collective agreement and employer simply bound to provide plan not benefits directly — Board has no jurisdiction to enquire into whether grievor improperly denied benefits — matter for grievor to assert against insurance carrier directly; grievance dismissed. *Re Marshall Gowland Manor & O.N.A.; Choi grievance*, May 8, 1986. Knopf — 16 pages. (5)

Statutory expedited arbitration under *Labour Relations Act*, R.S.O. 1980, c. 228, s. 45 — union or employer may invoke process; grievance arbitrable. *Re Brampton, Corporation of the City of & C.U.P.E., Local 831; group grievance*, May 8, 1986. Barton — 13 pages. (6)\*†

Union grieved new rate of pay — rate included in new collective agreement; inclusion not constituting waiver; grievance allowed. *Re General Tire Canada Limited & United Rubber, Cork, Linoleum and Plastic Workers of America, Local 536; policy grievance*, May 6, 1986. H. Brown, Dinsdale, Collins — 21 pages. (7)

### Bargaining Unit

Temporary employees — onus on employer to establish exclusion where employees are not otherwise excluded not satisfied — temporary security employees meet criteria for inclusion developed by C.L.R.B. and are covered by collective agreement; grievance allowed. *Re Ottawa-Carleton Regional Transit Commission & Independent Canadian Transit Union, Local 5 Security Department Employees; policy grievance*, May 8, 1986. Fois, Vice, Harnden — 10 pages. (8)\*

### Board of Arbitration

Consideration of charter of rights — arbitrator has jurisdiction to consider charter; hearing to continue. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology & O.P.S.E.U.; Blair grievance*, May 5, 1986. Majority: Teplitsky, Herbert; dissent: Shields — 15 pages. (9)\*

### Classification

Duties shared by three classifications — replacement of fluorescent lights not a distinct function of electrician but also within grievor's own classification duties — not entitled to higher rate of pay regardless of whether "equal work" or "equal skills" tests considered; grievance dismissed. *Re Hamilton-Wentworth Separate School Board & Caretakers and Maintenance Employees Association; Mio grievance*, May 6, 1986. Majority: Swan, Whelan; dissent: Freedman — 15 pages. (10)

Higher classification claimed — not established that grievor performing duties of higher classification on regular basis; grievance dismissed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 43; Glisinski grievance*, April 15, 1986. Majority: Boscariol, Milks; dissent: Tate — 10 pages. (11)

### Collective Agreement

Termination — evidence does not establish agreement to extend collective agreement or to continue to pay COLA adjustments during negotiation — past practice indicates any adjustments made retroactively; grievance dismissed. *Re Ladish Company of Canada Limited & International Association of Machinists and Aerospace Workers, Lodge 1936; policy grievance*, April 3, 1986. Hunter — 12 pages. (12)†

### Contracting Out

Causal connection with layoffs — production capacity reduced by supervening event not reasonably within contemplation of employer; no violation of collective agreement. *Re Algoma Steel Corporation Limited & U.S.W.A., Local 2251; group grievance*, May 13, 1986. Barton, Forbes, Woodcock — 10 pages. (13)

Daily control and direction of meter-readers exercised by independent contractor — no loss of wages, employment or demotion as result of contracting-out; contracting-out valid and permissible; grievance dismissed. *Re Public Utilities Commission of Sault Ste. Marie & C.U.P.E., Local 3; union grievance*, May 13, 1986. Majority: Duchesneau-McLachlan, Hebert; dissent: Grandbois — 15 pages. (14)

Maintenance work contracted out while bargaining unit employees in maintenance department laid off: contracting-out permitted by collective agreement — independent contractor having on-the-job control over work which is not core function of company and which varied daily; grievances dismissed. *Re Casco Company (London) & U.F.C.W.U., Local 617P; Rock, Mitchell grievances*, May 21, 1986. Majority: Samuels, Millman; dissent: Beaulieu — 32 pages. (15)

Maintenance work — tasks not normally performed by members of bargaining unit since before present collective agreement — grievance dismissed. *Re Timberjack Inc. & International Molders and Allied Workers; Fowler and Thomas grievance*, May 16, 1986. McLaren — 6 pages. (16)

### Discharge

Absenteeism — breach of attendance condition to conditional reinstatement alleged; not established; circumstances of absence not properly taken into account — attendance record improved; grievance allowed. *Re Monarch Fine Foods Company Limited & Teamsters, Local 647; Gogna grievance*, April 30, 1986. Knopf — 41 pages. (17)

Absenteeism — discharge following failure to report for work improper use of discipline to correct innocent absenteeism; still culminating incident justifying severe disciplinary action; 10-week suspension substituted. *Re St. Catharines Transit Commission & Amalgamated Transit Union, Local 846; Cosgrove grievance*, May 5, 1986. Baum — 10 pages. (18)†

Absenteeism — no violation of terms of settlement under which grievor previously reinstated after discharge for absenteeism — grievor assumed duties as required and settlement provided for legitimate future absence; grievance allowed. *Re Dow Chemical of Canada Inc. & E.C.W.U. Archer grievance*, May 9, 1986. Barton — 12 pages. (19)†



Absenteeism; marijuana addiction — conditional reinstatement subject to performance review; continued drug counselling. *Re Steinberg Inc. & Teamsters, Local 419, Skidmore grievance*, May 6, 1986. Springate, Peardon, Schultz — 21 pages. (20)

Abuse of patient — actions inexcusable given professional role of grievor — employees on notice as to consequences of patient abuse and circumstances do not support substitution of penalty; grievance dismissed. *Re Lincoln Place Nursing Home & O.N.A.; Tonks grievance*, May 6, 1986. Majority: Springate, Sergeant; dissent: Anand — 30 pages. (21)

Assault upon fellow employee — injury not intentional; past record not exemplary but not serious misconduct — no awareness of need for reform; grievance allowed in part; reinstatement with 4-month suspension substituted. *Re B & J Steel & U.S.W.A., Local 8925; Harton grievance*, May 20, 1986. Davis — 13 pages. (22)†

Assault upon patient: slap to elderly obstreperous resident — unacceptable behaviour whatever the provocation — grievor sorry for conduct; three-month suspension substituted for discharge. *Re Strathmere Lodge (Corporation of County of Middlesex) & L.D.S.W.U., Local 220; Daly grievance*, May 13, 1986. Hunter — 12 pages. (23)†

Assault upon supervisor — more like act of horseplay; suspension substituted for discharge. *Re St. Laurent I.G.A. & U.F.C.W.U., Local 175; Burke grievance*, May 21, 1986. Fraser — 24 pages. (24)†

Attempted theft — eight bottles of beer; prompt admission; isolated offence; good past record; not premeditated; reinstatement without compensation. *Re Carling O'Keefe Breweries of Canada Limited & United Brewery Workers, Local 325; Hiff grievance*, May 23, 1986. Weatherill — 7 pages. (25)

Attitude — attitudinal problems leading to harassment of students not sufficient grounds for discharge — no evidence of problems with co-workers or supervision — letter of warning; grievance partially allowed. *Re Halton and Mississauga Ambulance Services Limited & O.P.S.E.U.; Green grievance*, May 2, 1986. Majority: McKechnie, Herbert; dissent: Churchill-Smith — 14 pages. (26)

Criminal convictions for arson: fire on employer's premises — no evidence to establish that grievor set fires; grievor reinstated with full compensation. *Re Sheridan Inn & R.W.D.S.U., Local 448; DeMarsh grievance*, April 10, 1986. Brandt — 8 pages. (27)

Culminating incident — driver of bus for disabled discharged on unsubstantiated complaint — explanation offered for incident — no just cause for dismissal — no basis on which to assess penalty; grievance upheld. *Re All-Way Transportation Corporation & A.T.U., Local 113; Howard grievance*, May 12, 1986. Majority: Devlin, Herbert; dissent: Billings — 19 pages. (28)

Destruction of company property — discharge appropriate; grievance dismissed. *Re Canadian Ferro Hot Metal Specialties Limited & Teamsters, Local 879; Schaefer grievance*, May 21, 1986. E.B. Jolliffe — 19 pages. (29)†

Dishonesty — loan officer with previously unblemished record participated in issue of several fraudulent loans, one of which was to grievor's wife — breach very serious given grievor's position of trust; grievance dismissed. *Re Canadian Imperial Bank of Commerce & H. Michael Ramnauth*, May 21, 1986. Devlin — 34 pages. (30)

Drinking on duty — suspension appropriate; grievance allowed. *Re Dynasty Inn Limited & Hotel and Restaurant Employees and Bartenders International, Local 280; Humphrey grievance*, May 26, 1986. Baum — 7 pages. (31)†

Drug trafficking on company premises alleged — insufficient evidence to establish that grievor obtained, then sold drugs to other individuals, although grievor used drugs on company premises; reinstatement without compensation. *Re Chromolox Canada Limited & U.A.W.; Coulter grievance*, April 29, 1986. Rayner — 9 pages. (32)

Failure to explain presence in unauthorized area — explanation embarrassing to grievor — no rules re unauthorized area — explanation accepted by arbitrator; suspension substituted. *Re Kingston General Hospital & C.U.P.E., Local 1974; O'Donnell grievance*, May 12, 1986. Thorne — 13 pages. (33)†

Failure to report own work-related injury in accordance with company policy — failure blamed on co-worker — false accusation — grievor's evidence not credible — poor past record; grievance dismissed. *Re Sunnyside Home for the Aged (Regional Municipality of Waterloo) & L.D.S.W.U., Local 220; Johnson grievance*, May 26, 1986. Majority: Brent, Fillion; dissent: McDonald — 16 pages. (34)

Falsifying work time sheets and leaving work early without permission — discharge upheld. *Re T.R.S. Food Services Limited & Retail, Wholesale, Dairy and General Workers, Local 440; Publicover grievance*, February 22, 1986. R.J. Roberts — 8 pages. (35)

Fraud alleged — onus of proof not met; grievance allowed. *Re Zehrs Markets & Retail Clerks Union, Local 1977; Carson and Taylor grievances*, May 5, 1986. Weatherill — 12 pages. (36)

Quit alleged — employee has right to resign; binding on him if voluntary; no evidence of force or pressure; grievance dismissed. *Re Ramada Inn Don Valley & Hotel Employees, Restaurant Employees Union, Local 75; Lochusan grievance*, April 28, 1986. Foisy — 10 pages. (37)†

Refusal to obey work order — insubordination and assault on fellow employee — refusal to obey grounds for suspension — insubordination incident not grounds for discipline; assault was culminating incident and grounds for dismissal. *Re Ford Motor Company of Canada Limited & U.A.W., Local 200; Naraine grievance*, April 3, 1986. Palmer — 16 pages. (38)

Theft alleged — not proven grievor knowingly had possession; grievance dismissed. *Re Eureka Coach Company Limited & United Brotherhood of Carpenters and Joiners, Local 2679; Jairam grievance*, May 29, 1986. Davis — 12 pages. (39)†

Theft of drill press while grievor holding position of trust as school custodian — no admission of guilt until police investigation and refusal to return equipment despite opportunity given; grievance dismissed. *Re London Board of Education & C.U.P.E., Local 190; Gristey grievance*, May 22, 1986. McLaren — 12 pages. (40)

Threatening co-worker with knife — no corroboration available; further threat with tow motor was corroborated; incident less serious; reinstatement with no compensation. *Re Swissplas Limited & E.C.W.U., Local 819; Gill grievance*, May 5, 1986. Betcherman — 11 pages. (41)†

Work performance — employer imposed new rules; reinstatement without compensation. *Re Tip of the Bay Motor Hotel & S.E.U., Local 183; Pryde grievance*, May 22, 1986. Draper — 8 pages. (42)†



Work performance — evaluation method unfair; reinstatement with three-month loss of pay substituted. *Re Tele-Direct (Publications) Inc. & O.P.E.I.U., Local 131; Brown grievance*, April 28, 1986. Devlin — 45 pages. (43)

Work performance unsatisfactory — employer to assist in finding alternative employment; grievance allowed. *Re McKellar General Hospital & C.U.P.E., Local 1409; Coulouris grievance*, May 20, 1986. Joyce — 12 pages. (44)\*†

## Discipline

Assault — onus on employer to satisfy on a balance of probabilities that just cause for discipline existed satisfied — in view of grievor's seniority previous record and relatively minor nature of blow inflicted on co-worker; five-day suspension is reduced to three days; grievance partially allowed. *Re Masland Carpets of Canada Limited & Amalgamated Clothing and Textile Workers Union; Chandon grievance*, May 6, 1986. Boscariol — 5 pages. (45)†

Assault alleged — evidence not establishing alleged assault; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; Labine grievance*, April 30, 1986. Burkett — 17 pages. (46)

Carelessness — grievor's explanation of accident incident not accepted; grievance dismissed. *Re Stelco Hilton Works and U.S.W.A., Local 1005; Stumpo grievance*, April 9, 1986. Majority: Rayner, Atkinson; dissent: Marshall — 11 pages. (47)

Carelessness: inappropriate use of equipment — employer policy not communicated; common sense required to avoid injury; two-week suspension reduced to three days. *Re Metal Shapes Incorporated & U.A.W., Local 636; Clavette grievance*, April 28, 1986. Samuels — 5 pages. (48)†

Carelessness — production error in feeding wrong sections into bindery process not culminating incident; notice of progressive discipline requires initial warnings followed by more severe penalties; no justification for moving from warning to two-week suspension in circumstances; 2-day suspension substituted. *Re Southam Murray & Teamsters Union, Local 419; Floyd grievance*, May 6, 1986. Burkett — 11 pages. (49)

Counselling letter issued to grievor for safety infraction — letter withdrawn during grievance procedure — letter subsequently re-issued in modified version — company barred from re-issuing letter; grievance allowed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Lavoie grievance*, May 28, 1986. Brunner — 14 pages. (50)

Culminating incident: evidence of employer witnesses accepted and incident established — poor disciplinary record justifies discharge. *Re Inn on the Park (Four Seasons Hotel Limited) & Hotel Employees, Restaurant Employees Union, Local 75; Glykis grievance*, March 12, 1986. Palmer — 7 pages. (51)

Failure to punch out at lunch — entitled to paid lunch; grievance allowed. *Re Lily Cups Inc. & Graphic Communications International Union, Local 466; Gillies grievance*, April 30, 1986. H. Brown — 13 pages. (52)

Insolent and intimidating conduct by grievor to patient's spouse arising from patient's spouse's complaint regarding grievor's treatment of patient — culminating incident — poor past record — suspension sustained but change to shift schedule inappropriate; grievance allowed in part. *Re St. Mary's Hospital (London) & L.D.S.W.U., Local 220; Borshell grievance*, May 21, 1986. Majority: Devlin, Mustard; dissent: Solberg — 18 pages. (53)

Insolent behaviour culminating in ethnic slur to foreman — union official on authorized business but not union business; no immunity; written warning substituted for suspension. *Re Petro Canada Inc. & E.C.W.U., Local 593; Clarke grievance*, May 14, 1986. Barrett — 10 pages. (54)†

Insubordination: breach of college policy and directives — previous disciplinary record for similar incidents; five-day suspension upheld; grievance dismissed. *Re Seneca College & O.P.S.E.U.; Burton grievance*, May 1, 1986. Majority: Brent, Hubert; dissent: Herbert — 26 pages. (55)

Insubordination — entering plant in breach of employer rule controlling access not insubordination; defiant attitude absent; written warning substituted for three-day suspension; grievance partially allowed. *Re Standard Modern Technologies & U.S.W.A., Local 3252; Lisinski grievance*, April 28, 1986. Déom — 9 pages. (56)†

Insubordination — refusal to attend training course during working hours — job description required ability to work on gas pipe lines; grievor refused to obey clear order; grievance dismissed. *Re Eldorado Resources Limited & U.S.W.A., Local 13173; Wells grievance*, May 7, 1986. Devlin — 13 pages. (57)

Insubordination — withholding information: onus on employer to justify discipline not met; likelihood of grievor having information requested not established; grievance allowed. *Re Great Lakes Forest Products Limited & Canadian Paperworkers Union, Local 39; Cryderman grievance*, February 17, 1986. Majority: Duchesneau-McLachlan, Stencer; dissent: Holt — 10 pages. (58)

Intoxication — supervisor's decision as to fitness to work takes precedence over opinion of company doctor; suspension justified; grievance dismissed. *Re McDonnell Douglas Canada Limited & U.A.W., Local 1967; Catania grievance*, May 12, 1986. Betcherman — 6 pages. (59)†

Lateness in reporting to work — poor past record; 5-day suspension upheld; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; St. Martin grievance*. See (50), *supra*. (60)

Leaving work early without authorization — mitigating circumstances; written reprimand appropriate. *Re Rio Algom Limited & U.S.W.A., Local 5417; Evjent grievance*, April 30, 1986. O'Shea — 15 pages. (61)

Sleeping during night shift: 9-day suspension upheld; grievance dismissed. *Re Tricil (Sarnia) Limited & I.U.O.E., Local 793; Dauw grievance*, May 15, 1986. Hinnegan — 6 pages. (62)†

Sleeping on job — minor infringement of good work practices under unusual circumstances — written warning substituted for one-day suspension. *Re Tricil (Sarnia) Limited & I.U.O.E., Local 793; McLaughlin grievance*, May 5, 1986. Gandz — 8 pages. (63)†

Suspension interfering with expectation of overtime — employer not obligated to take all economic consequences of disciplinary suspension into account; work not scheduled until list posted; grievor volunteered but was never scheduled to work overtime; grievance dismissed. *Re National Edible Oils & U.F.C.W.U., Local 208; Smith grievance*, April 18, 1986. Solomatenko — 22 pages. (64)\*†

Unauthorized entry into plant after hours alleged — not established on evidence; grievance allowed with full compensation for suspension. *Re iil Limited & United Brotherhood of Carpenters and Joiners, Local 2679; Doherty grievance*, May 8, 1986. Davis — 19 pages. (65)†



Warning concerning conducting union business on company premises not preceded by proper investigation of facts — not justified — warning concerning use of profane language by union official conducting labour relations with company justified; grievance allowed in part. *Re Mercedes Textiles Limited & International Woodworkers, Local 2-511; Reasbeck grievances*, May 26, 1986. Frankel — 15 pages. (66)

### Employment Status

Students — students excluded from definition of employee under collective agreement and service while student cannot be counted towards probationary requirements after status changed to regular employee — grievor therefore probationary employee at discharge; grievance dismissed. *Re GTE Sylvania Canada Limited & U.E., Local 539; MacIntosh grievance*, May 2, 1986. Kirkwood — 8 pages. (67)†

### Estoppel

Conduct during negotiations — representations made at bargaining table designed to affect legal relations which are to be governed by collective agreement under negotiation can support estoppel — wage issue raised in negotiations and subsequently dropped; preliminary objection upheld. *Re Ontario Banknote Limited & Toronto Typographical Union 91; wage grievance*, April 25, 1986. Foisy — 16 pages. (68)†

Notice of change of days off — employer relied on union acquiescence to practice of not providing notice during semi-annual lay-off and recall process; foregone right to negotiate changes as result — union estopped until termination of present agreement; grievance dismissed. *Re Ault Dairies & Dairy Employees; policy grievance*. See (4), *supra*. (69)\*†

### Evidence

Hearsay: employer sought to report conversation with third party — conversation hearsay and not admissible; hearing to continue. *Re Windsor, Board of Education for the City of & Federation of Women Teachers' Association of Ontario; Bernyk grievance*, May 16, 1986. Weatherill, Farson, Bartlet — 5 pages. (70)

### Grievance

Form — grievances submitted in French only although collective agreement requires filing in English — objection waived when objection not noted in letter to Office of Arbitration agreeing to appointment of single arbitrator; grievances arbitrable. *Re: Mercedes Textiles Limited & International Woodworkers, Local 2-511; Reasbeck grievances*. See (66), *supra*. (71)

### Grievance Procedure

Time limits for grievance mandatory — grievance not arbitrable; grievance dismissed. *Re Harding Carpets Limited & Amalgamated Clothing and Textile Workers, Local 1857; Caskie grievance*, May 24, 1986. Hearn — 17 pages. (72)†

Timeliness — grievance presented twelve days beyond time limits arbitrable — provisions discretionary but appropriate for board to exercise discretionary powers to extend time limits under s. 44(6) *Labour Relations Act* in any case — grievance procedure exhausted by refusal of employer to accept and reference to arbitration not barred by s.45(3) of the *Act*; preliminary objections dismissed. *Re Canada Cup & E.C.W.U., Local 22; Shody grievance*, April 30, 1986. H.D. Brown — 21 pages. (73)†

Timeliness — “working days” defined as those of company president — response of employer within proper time-limits but would be appropriate to extend limits under s.44(6) in any case; preliminary objection dismissed. *Re Mercedes Textiles Limited & International Woodworkers of America, Local 2-511; Cadieux grievance*, May 2, 1986. Wright — 13 pages. (74)†

### Holidays

Qualifying days — grievor on permanent lay-off who worked day before but not day after not entitled — holiday pay is compensation for work done, not mere subsistence of employment relationship; grievance denied. *Re C.R. Snelgrove Company & U.E., Local 514; Divitaris grievance*, May 8, 1986. Solomatenko — 9 pages. (75)\*†

### Holiday Pay

Absence from work while in receipt of worker's compensation benefits — no entitlement to holiday pay; grievance dismissed. *Re Canadian Dressed Meats, Division of Burns Foods (1985) Limited & U.F.C.W.U., Local 287P; Catania grievance*, April 29, 1986. Solomatenko — 18 pages. (76)†

Qualifying days: employee on workers' compensation on qualifying days — legitimate absence on days before and after holiday — met attendance requirement; grievance upheld. *Re Sudbury, Corporation of the City of & C.U.P.E., Local 1662; Monahan grievance*, April 30, 1986. Joyce — 7 pages. (77)†

### Illness

Fitness to return to work — employer having taken reasonable steps over four years to find work suitable to grievor's work-related back injury — grievor unable to qualify for such work on two occasions by failing tests — grievor taking position that he is totally disabled although certified as partially disabled — little likelihood of return; grievance dismissed. *Re Domglas Inc. & United Glass and Ceramic Workers of North America, Local 260; Wakil grievance*, April 28, 1986. McLaren — 13 pages. (78)

### Job Evaluation

Higher job factor ratings claimed — grievor's duties requiring higher rating; grievance allowed. *Re Sudbury, Regional Municipality of & C.U.P.E., Local 207; Riopel grievance*, May 14, 1986. H. Brown — 15 pages. (79)

Revision of job description and down-grading of job on salary grid — personal animus between grievor and evaluator jeopardized objectivity — lack of good faith; grievance allowed. *Re York University & York University Staff Association; Thompson grievance*, May 21, 1986. Barton — 48 pages. (80)

### Job Posting

Working foreman position — posting not required; grievance dismissed. *Re Ault Dairies & Milk and Bread Drivers, Local 647; Schutte grievance*, May 2, 1986. E.B. Jolliffe — 16 pages. (81)†

### Lay-Off

Available work — analysis of available work to establish propriety of laying off more senior electricians II rather than more qualified electricians III — analysis defective — Woodward grievance allowed; supplementary award. *Re Ottawa, Corporation of the City of & Ottawa-Carleton Public Employees Union, Local 503, Woodward and Desloges grievances*, March 10, 1986. Majority: D. Scott, Gladu; dissent: Switzman — 17 pages. (82)



Bumping rights — lead hands not entitled to displace regular service persons on service routes when work shortage develops for lead hands; grievance allowed. *Re Canteen of Canada Limited & U.F.C.W.U., Local 206; MacDonald grievance*, May 23, 1986. Majority: Kennedy, Rudrum; dissent: Brisbin — 20 pages. (83)

Full-time worker laid off and given part-time work: management prerogative to lay-off; grievance dismissed. *Re Simpsons Limited & R.W.D.S.U.; Bartoszewicz grievance*, May 16, 1986. Weatherill, Simpson, Solberg — 7 pages. (84)

Hiatus between assignments of clients for social workers not constituting substantial reduction in workforce — not a lay-off; inactive status not recognized by collective agreement for non-payment of wages — compensation payable during hiatus; grievance allowed. *Re Youth Services Bureau of Ottawa-Carleton & C.U.P.E., Local 2195; Pageau and Beeman grievances*, May 12, 1986. Carrothers — 16 pages. (85)†

Qualifications — trial period not fair; comparison with superior worker not individual to be replaced; grievance allowed. *Re Stewart Group Limited & Amalgamated Clothing and Textile Workers Union, Local 1591; Caesar grievance*, April 28, 1986. T.A. Jolliffe — 22 pages. (86)†

#### Leave of Absence

Personal leave — leave unreasonably withheld; grievance upheld. *Re Strudex Fibres Limited & U.F.C.W.U., Local 1984; Ferreira grievance*, May 2, 1986. Wilson — 9 pages. (87)†

Retroactive grant of leave of absence for two days due to grievor attending to son's illness — grant coupled with requirement that any future absence due to son's illness or grievor's own illness must be validated by medical certificate — requirement unreasonable; grievance allowed in part. *Re Kapuskasing Board of Education and O.S.S.T.F.; Kuyntjes grievance*, May 27, 1986. McKechnie, McNeil, Rukavina — 8 pages. (88)

#### Management Rights

Rule restricting smoking — vulnerability to fire loss or damage — exercise of management rights in fair and reasonable manner; grievance dismissed. *Re Van Dresser Limited & U.A.W., Local 1524; policy grievance*, May 15, 1986. Solomatenko — 10 pages. (89)\*†

#### Overtime

Distribution — assignment given to employee outside distribution group — grievor must establish right to him adversely affected; compensation already paid to entitled employee; grievance dismissed. *Re Algoma Steel Corporation & U.S.W.A., Local 2251; Hanchar grievance*, May 8, 1986. Davis, Woodcock, Forbes — 9 pages. (90)

Distribution — situation no longer an emergency at time employer called in non-departmental employee; grievor entitled to shift and full compensation awarded in lieu; grievance allowed. *Re Mercedes Textiles Limited & International Woodworkers of America, Local 2-511; Cadieux grievance*. See (74), *supra*. (91)

Entitlement — grievor assisting regular worker; eligible for overtime as actually performing job; grievance allowed. *Re General Foods Inc. & U.F.C.W.U., Local 1230; Walsh grievance*, May 26, 1986. Boscariol — 5 pages. (92)†

Entitlement — grievors not required to work 40 hours before receiving overtime; grievance allowed. *Re Becker Milk Company Limited & Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647; Wainmen and Ayles grievances*, April 22, 1986. Teplitsky — 3 pages. (93)

Inequitable distribution alleged within crew in same classification — not established — variance of up to 24 hours permissible; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; St. Martin grievance*, May 28, 1986. See (50, 60), *supra*. (94)

Lieu time request denied — management required staff due to workload — management has right to schedule staff despite lieu provisions; grievance dismissed. *Re St. Thomas-Elgin General Hospital & O.N.A.; Day grievance*, May 13, 1986. Hinnegan — 16 pages. (95)†

Work assigned to other employee on next shift — employer entitled to transfer employees to handle production needs; grievance dismissed. *Re Long Manufacturing Limited & I.A.M., Local 2330; Pollender grievance*, May 16, 1986. Majority: McLaren, Wace; dissent: McDonald — 7 pages. (96)

Work started within 24 hours of last shift — overtime appropriate; grievance allowed. *Re Standard Products (Canada) Limited & United Rubber, Cork, Linoleum and Plastic Workers of America, Local 719; Elliott and Bearss grievance*, May 25, 1986. Barton — 6 pages. (97)†

#### Overtime Pay

Premiums payable for work performed on a non-scheduled day as well as for hours worked in excess of forty in same calendar week — not pyramiding because not accumulation of premiums for same hours worked; grievance allowed. *Re Canada Packers Inc. & U.F.C.W.U., Local 617P; group grievance*, May 7, 1986. Majority: Weatherill, Zimmerman; dissent: Williamson — 13 pages. (98)

#### Part-time Employees

Part-time employees required to sign acknowledgement that they are not entitled to receive welfare benefits or supplemental unemployment benefits on termination but liable to pay union dues and initiation fee; grievance settled. *Re Canteen of Canada Limited & R.W.D.S.U., Local 414; policy grievance*, May 1, 1986. O'Shea — 4 pages. (99)

#### Pensions

Letter of intent attached to collective agreement indicating new non-contributory pension plan to be established on certain terms with details to be negotiated — credit for past service to be included — letter forming part of collective agreement; grievance allowed. *Re General Bakeries Limited (GB Wonder Division) & Bakery, Confectionery and Tobacco Workers, Local 264; policy grievance*, May 12, 1986. O'Shea — 37 pages. (100)

#### Probationary Employee

Arbitrability of discharge — substantive right to discharge with just cause cannot be removed by denial of access to grievance procedure; preliminary objection dismissed. *Re Canada Cup and E.C.W.U., Local 22; Shody grievance*, April 30, 1986. See (73), *supra*. (101)

Recall rights — probationary employee entitled to recall after four months' non-consecutive employment; grievance allowed. *Re Timmins, Corporation of the City of & C.U.P.E., Local 210; Dillon grievance*, May 27, 1986. Betcherman — 5 pages. (102)†

## Promotion

Qualifications — grievor lacking sufficient ability to read blueprints which was posted job requirements — tests of reading ability relevant reliable and valid — training period of ten days for familiarization; grievance dismissed. *Re Canadian A.S.E. Limited & U.S.W.A., Local 8694; Bontsu-Antwi grievance*, May 22, 1986. Déom — 11 pages. (103)†

Qualifications — previous job experience perfunctorily dismissed; grievance allowed and position awarded to grievor. *Re Wellesley Hospital & O.N.A.; Hardeen grievance*, May 12, 1986. Boscaroli — 6 pages. (104)†

## Recall

Qualifications: junior employee given grievor's work — grievor lacked ability to perform job; grievance dismissed. *Re Pfizer Canada Inc. & E.C.W.U., Local 27; Berniquer grievance*, May 26, 1986. Thorne — 15 pages. (105)†

## Safety

Refusal to assist co-worker on underground work — grievor nervous as inexperienced trainee — parties not treating refusal as within part V of *Occupational Health and Safety Act* — no reasonable grounds to apprehend danger in circumstances; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Bender grievance*. See (50, 60, 94), *supra*. (106)

## Scheduling of Work

Composition of work crews — influence of seniority as factor in shift scheduling not extend to right to work on particular crew — supplementary agreement varied use of seniority as contemplated in collective agreement; grievance dismissed. *Re Eldorado Resources Limited & U.S.W.A., Local 13173; Babb grievance*, February 4, 1986. Palmer — 7 pages. (107)

Loss of preferred days off — no requirement under collective agreement; grievance dismissed. *Re Stelco Inc. & U.S.W.A., Local 1005; McSweeney grievance*, May 22, 1986. Majority: Kennedy, Storie; dissent: O'Neal — 10 pages. (108)

"Regular day shift" — hours of work varied by agreement between union and employer; could only be varied again by mutual agreement. *Re Dayton-Walther Canada Limited & U.A.W., Local 1917; Ross grievance*, March 10, 1986. Palmer — 6 pages. (109)

## Seniority

Part-time employees transferred to full-time positions as new employees — policy grievance appropriately brought by union — issue involved rights of full-time employees — employees entitled to full seniority based on length of service; grievance upheld. *Re Conestoga College of Applied Arts and Technology & O.P.S.E.U.; policy grievance*, January 10, 1986. Palmer, Kaufman, Shields — 12 pages. (110)

Protection from bumping after job freeze application filed — employer not able to bump grievor during lay-off; grievance allowed. *Re Sherman Mine, Cliffs of Canada Limited & U.S.W.A., Local 6896; Dougall grievance*, May 15, 1986. Joyce — 10 pages. (111)†

## Severance Pay

Dismissal pursuant to surplus declaration — not displacement by less senior teacher under vital program provision of agreement; not entitled to severance gratuity — award based on guarantee of 160 teaching days and interest of 9% on amount due; grievance dismissed. *Re Timiskaming Board of Education & Branch Affiliates of OSSTF and AEFO Representing Timiskaming Secondary School Teachers; Nagy grievance*, April 11, 1986. Marcotte — 11 pages. (112)

## Sick Pay

Entitlement — employer alleged unauthorized absence or Workers Compensation Board claim; clear evidence that sick claim bona fide; grievance allowed. *Re Welland County General Hospital & O.N.A.; Saumure grievance*, May 10, 1986. E.B. Jolliffe — 23 pages. (113)†

Fatigue — fatigue not within definition of sick pay; grievance dismissed. *Re North York, Hydro Electric Commission of the City of & C.U.P.E., Local 11; Atcheson grievance*, May 20, 1986. Joyce — 7 pages. (114)†

## Transfer

Inability to perform work — employer entitled to transfer; grievance dismissed. *Re Chromasco Limited & U.S.W.A., Local 4632; policy grievance*, May 22, 1986. McCaughey — 3 pages. (115)†

Relocation to another store — seniority provisions do not apply — employer discretion exercised reasonably with regard to grievor's residence; grievance dismissed. *Re New Dominion Stores Inc. & R.W.D.S.U., Local 414; Andrews grievance*, May 9, 1986. Kirkwood — 9 pages. (116)†

## Union Rights

Permission to attend arbitration refused — leave unreasonably denied; grievance allowed. *Re Fanshawe College & O.P.S.E.U.; Gurofsky grievance*, May 14, 1986. Majority: H.D. Brown, Ziemba; dissent: Hubert — 28 pages. (117)

## Vacations

Scheduling — company's right to schedule grievors' vacation time during plant shutdown not conditional upon extraneous factors such as illness interfering with employees' enjoyment of vacation; grievances dismissed. *Re Adams Mine Cliffs of Canada Limited & U.S.W.A.; Davis and Dobratz grievances*, May 1, 1986. O'Shea — 13 pages. (118)

Scheduling — employer entitled to alter vacation scheduling under collective agreement; grievance dismissed. *Re Molson's Breweries (Ontario) Limited & Brewery Workers', Local 306; policy grievance*, May 23, 1986. Barrett — 11 pages. (119)†

Supervisor included in bargaining unit vacation schedule — no violation of agreement; grievance dismissed. *Re Great Lakes Power Limited & C.U.P.E., Local 3033; policy grievance*, May 23, 1986. T. Jolliffe — 17 pages. (120)†

## Vacation Pay

Entitlement where lay-off: laid-off workers eligible for vacation pay bonus; grievance allowed. *Re Babcock and Wilcox Canada & U.S.W.A., Local 2859; policy grievance*, May 5, 1986. Majority: Shime, Wilton; dissent: Simpson — 10 pages. (121)



**Wages**

Christmas bonus claimed as full-time benefit to be restored to workers recalled to part-time work but working full-time hours — bonus payable; grievance allowed. *Re Willett Foods Limited & R.W.D.S.U., Local 414; group grievance*, May 23, 1986. Majority: Brunner, Barclay; dissent: Sargeant — 14 pages. (122)

Incentive rate changed following time study of changed elements of job-rate properly changed — grievor unable to prove inability to maintain former average earnings; grievance dismissed. *Re Emhart Canada Limited, International Hardware Division & International Molders and Allied Workers, Local 428; Young grievance*, May 22, 1986. Weatherill — 12 pages. (123)

Incentive rates — grievors wanted benefits without disadvantages — could bid for different positions each year; grievances dismissed. *Re Glengarry Transport Limited & United Brewery Workers, Local 205; Blayney and Murray grievances*, May 5, 1986. Kates — 12 pages. (124)

Lunch period — Saturday overtime — part of continuous shift operation; entitlement to 20-minute paid lunch established; grievance allowed. *Re Frankel Steel Limited & U.S.W.A., Local 8945; group grievance*, May 27, 1986. Kennedy — 11 pages. (125)

Part-time workers: union claimed same increase for part-time as full-time workers — increase not applicable; grievance dismissed. *Re Ryerson Polytechnical Institute, Board of Governors & O.P.S.E.U., Local 596; policy grievance*, January 28, 1986. Teplitsky, Herbert, Correll — 6 pages. (126)

Placement on experience grid — despite classification as "occasional" experience that of full-time teacher in duties and responsibilities and of the type contemplated in collective agreement provision on salary placement — credit for experience as well as compensation awarded; grievance allowed. *Re Carleton Board of Education & O.S.S.T.F. (District 43); Kelso grievance*, May 9, 1986. Majority: Weatherill, Cazabon; dissent: White — 15 pages. (127)

Placement on grid — credit for "years of experience" not limited to prior experience with local board while under contract; grievance allowed. *Re Lincoln County Roman Catholic Separate School Board & Ontario English Catholic Teachers' Association; Timmins grievance*, April 30, 1986. Majority: Knopf, Griffin; dissent: Ennis — 14 pages. (128)

Prior related experience: placement on salary grid — employer failed to properly apply procedure and standards specified in agreement; grievance allowed in part. *Re Ottawa Civic Hospital & Association of Allied Health Professionals: Ontario; policy grievance*, May 1, 1986. Emrich, Halpert, Raven — 29 pages. (129)

Retroactive increases to salary schedule: time of payment of retroactive increases to salary schedule — payment due within three pay periods of date of issue of award; interest awarded to employees; grievance upheld. *Re Victoria Hospital Corporation & O.N.A.; policy grievance*, April 25, 1986. R.J. Roberts — 9 pages. (130)

Students — entitled only to student rate; grievance dismissed. *Re Swiss Chalet Employer's Association & Canadian Union of Restaurant and Related Employees, Hotel Employees and Restaurant Employees Union, Local 88; union grievance*, April 30, 1986. McLaren — 9 pages. (131)

**Welfare Plans**

Life insurance benefits — grievor's estate entitled to proceed if grievor meets eligibility requirements in collective agreement despite conflicting eligibility requirements in insurance contract; grievance allowed. *Re Hoffman (North) Concrete Products Limited (497911 Ontario Limited) & Teamsters, Local 230; Jomantas grievance*, May 23, 1986. Majority: Fraser, Herbert; dissent: Hoffman — 15 pages. (132)

**Work Assignment**

Assignment of employee from different classification to work during plant shutdown — senior employee in work classification entitled to assignment — violation of collective agreement; grievance upheld. *Re Foster Wheeler Limited & U.S.W.A., Local 6519; Clarkson grievance*, April 23, 1986. Brandt — 9 pages. (133)

Bargaining unit work transferred to volunteer group — violation of collective agreement; grievance allowed. *Re Timmins, Corporation of the City of & C.U.P.E., Loc. 210; grievance re definition of bargaining unit work*, May 23, 1986. Joyce — 6 pages. (134)†

Seniority to govern temporary assignments of higher classification jobs in employee's area of work subject to relatively equal ability to perform — temporary promotion need not be utilized by employer if work may be assigned by other means; grievance dismissed. *Re Brampton, Corporation of the City of & C.U.P.E., Local 831; Benham grievance*, March 27, 1986. Majority: Rayner, O'Toole; dissent: Maddison — 13 pages. (135)

Temporary supervisor performing minimal amount of bargaining unit work to assist — violation of collective agreement; grievance allowed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Trudel grievance*. See (50, 60, 94, 106), *supra*. (136)

Work of the bargaining unit — newly created supervisory position within bargaining unit; no basis to interpret "employee" under *Labour Relations Act* as in some other special manner — specified exclusions on job titles not job categories and no evidence managerial functions unduly restricted by such interpretation; grievance allowed. *Re Barrie, Corporation of the City of & C.U.P.E., Local 2380; policy grievance*, May 5, 1986. Solomatenko — 10 pages. (137)†

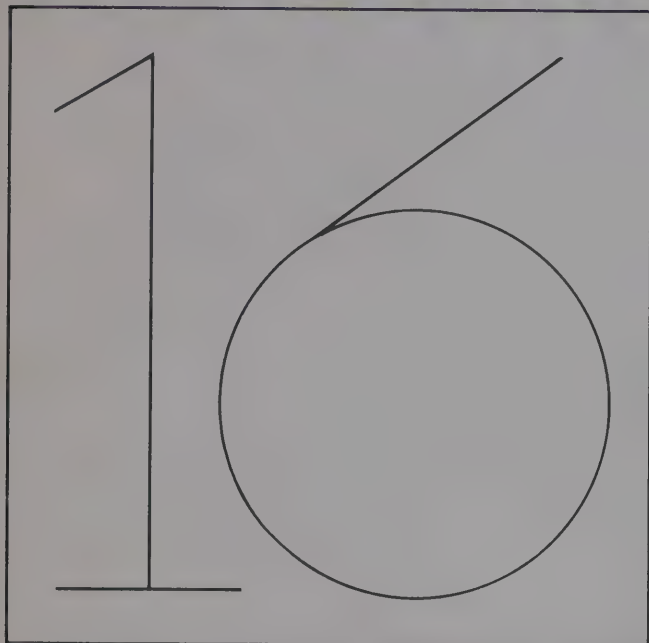
**Work Scheduling**

Assignment of work outside normal work week — no violation of collective agreement; grievance dismissed. *Re Algonquin College of Applied Arts and Technology & O.P.S.E.U.; Eltis grievance*, May 7, 1986. Majority: Shime, O'Connor; dissent: Freedman — 3 pages. (138)

Shift rotation — employer entitled to schedule work and no obligation to equalize numbers on each shift but if chooses to operate three shift system must assign at least one employee to all three shifts; grievance allowed. *Re McDonnell Douglas Canada Limited & U.A.W., Local 1967; group grievance*, April 17, 1986. Foisy — 9 pages. (139)†

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# Monthly Bulletin



Ontario Ministry of Labour



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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1981, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of June, 1986. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Discharge of employee treated as probationer challenged — service to company while part-time employee to be credited toward calculation of seniority as full-time employee at point of discharge — grievor not probationer; grievance arbitrable. *Re Superior Ambulance Limited & O.P.S.E.U., Local 207; Heikooop grievance*, June 4, 1986. Majority: Kates, McIntyre; dissent: Billings — 15 pages. (1)

Employee evaluations — no right to grieve evaluation standing by itself. *Re St. Joseph's Hospital, London & L.D.S.W.U., Local 220; policy grievance*, July 31, 1985. Teplitsky, Beaulieu, Coups — 4 pages. (2)

Harassment by supervisor alleged — estoppel not available; arbitrator did not have jurisdiction to hear merits of case; grievance dismissed. *Re Ottawa General Hospital & O.N.A.; Weinber grievance*, June 12, 1986. Fraser — 12 pages. (3)†



Settlement alleged — union alleged that company had not fully complied with terms of settlement — company failed to engage in *bona fide* attempt to comply with terms of settlement — no bar to board's jurisdiction. *Re TDL Woodtreating Limited & C.U.O.E., Local 101; Grgar grievance*, June 4, 1986. Boscarior — 5 pages. (4)†

Violations of previous agreements — jurisdiction only for term of present agreement; grievance allowed in part. *Re Romi (Division of Ault Foods Limited) & U.F.C.W.U., Local 175; policy grievance*, May 29, 1986. Weatherill — 10 pages. (5)\*

#### Bereavement Leave

Bereavement occurred during vacation — restrictive language of collective agreement disentitled grievors to paid leave at later date. *Re Rio Algom Limited & U.S.W.A., policy grievance*, June 11, 1986. Tacon — 15 pages. (6)\*

#### Board of Arbitration

Exhaustion of jurisdiction — board could not revoke a condition of a previous award. *Re Ontario Jockey Club & S.E.I.U., Local 528; Glugosh grievance*, June 11, 1986. Majority: Freedman, Bertuzzi; dissent: Tate — 19 pages. (7)

Jurisdiction — board has jurisdiction to consider relevant statutes in interpreting collective agreement — definition of just cause cannot include prohibited grounds set out in *Human Rights Code*. *Re Stelco & U.S.W.A., Local 3561; Salamon grievance*, June 24, 1986. Majority: Brent, Jaz; partial dissent: Clark — 25 pages. (8)\*

Retention of jurisdiction — proper to invoke retained jurisdiction. *Re Participating Hospitals & O.N.A.; Lichty grievance*, June 9, 1986. Majority: Weatherill, Paliare; dissent: Winkler — 15 pages. (9)

#### Call-In

Shift cancelled due to power failure beyond control of employer — employees given option to do other work or go home; employees who opted to go home not entitled to call-in pay. *Re Dome Mines Limited & U.S.W.A.; group grievance*, May 14, 1986. H.D. Brown, Aubut, Furlong — 13 pages. (10)

Premium pay for call-in paid when "extra trip" into work required — no extra trips made by grievors when called in while on vacation; grievance dismissed. *Re Northern Telecom Canada & U.A.W., Local 1915; Somerset and Thompson grievances*, June 24, 1986. Kilgour — 12 pages. (11)†

#### Classification

Higher classification claimed: grievor performing duties of higher classification only at low level of skill; retroactive payment at new rate ordered. *Re Lawson Packaging Toronto & Graphic Communications International Union, Local 500M; Bolton grievance*, May 30, 1986. T.A.B. Jolliffe — 24 pages. (12)†

Higher classification sought — every aspect of job not required to give higher classification; grievance allowed. *Re Ingersoll Fasteners, Division of Ingersoll Machine and Tool Company Limited & U.S.W.A., Local 3683; Ferrier grievance*, April 22, 1986. Palmer — 6 pages. (13)

Higher rate claimed — duties squarely within higher classification; grievance allowed; compensation ordered. *Re Ontario Hydro & C.U.P.E., Local 1000; Spencer, Walker and Cochrane grievances*, May 16, 1986. Majority: P. Picher, Vincer; dissent: Cowan — 30 pages. (14)

Higher rate claimed — past practice of assigning job to higher classification — nothing in collective agreement requiring such assignment; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Local 1000; policy grievance*, April 11, 1986. Majority: McCamus, Abbott; dissent: Vincer — 19 pages. (15)

Higher rate claimed for work not peculiar to higher classification — past practice to pay lower rate; grievance dismissed. *Re Noront Steel Limited & U.S.W.A., Local 6363; Habjanec grievance*, May 29, 1986. Dunn — 4 pages. (16)

Higher rate claimed — where unique duties of higher classification performed on a substantial basis employees should be characterized as in that classification and entitled to applicable rate; grievance allowed. *Re Northern Telecom Canada Limited & U.A.W., Local 1915; policy grievance*, June 12, 1986. Palmer — 10 pages. (17)

Lay-off from higher classification — same duties performed in lower classification — grievor found improperly classified and thus properly laid-off; grievance dismissed. *Re Precious Plate Limited & Communications Electronics, Electrical, Technical and Salaried Workers of Canada, Local 561; Dulai grievance*, May 30, 1986. Weatherill — 10 pages. (18)

Performance of work of higher classification — reclassification justified. *Re Seneca College & O.P.S.E.U.; Nelson grievance*, April 24, 1986. P. Picher, Beaulieu, Gallivan — 46 pages. (19)

Rate of higher classification claimed for 1½ hours' work in removing motor — work not normally performed by grievor but work performed not central core of classification claimed; grievance dismissed. *Re Uniroyal Limited & United Rubber Workers; Tracey grievance*, May 16, 1986. Rayner, Shea, Johnson — 7 pages. (20)

Rate of higher classification claimed for welding work performed — ambiguity in collective agreement resolved by past practice establishing that welder's rate paid for such work; grievance allowed. *Re Walker Exhausts Cambridge, Ontario Facility & U.S.W.A., Local 2897; Dedman grievance*, June 16, 1986. O'Shea — 11 pages. (21)

Reclassification of maintenance job to include fire and rescue duties — management had no authority to require members to perform dangerous work; grievance allowed. *Re Hamilton-Wentworth, Regional Municipality of & C.U.P.E., Local 5; June 5, 1986. McCulloch — 5 pages. (22)*

#### Damages

Lay-off improper — grievor not entitled to benefit — premiums not paid by employer during period of improper lay-off; grievor entitled to collect only for loss suffered and no evidence benefits lost because of employer failure to make payments; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited & U.A.W., Local 112; Kulas grievance*, June 5, 1986. Gorsky — 6 pages. (23)

Unjust discharge — amount specified; supplementary award. *Re Sheridan Inn & R.W.D.S.U., Local 448; DeMarsh grievance*, May 22, 1986. Brandt — 4 pages. (24)

#### Demotion

Incompetence alleged — incompetence not proved; grievance allowed. *Re Ingersoll Machine and Tool Company Limited & U.S.W.A., Local 2918; Hedberg grievance*, May 20, 1986. Palmer — 6 pages. (25)

Non-disciplinary demotion for unsatisfactory performance — demotion proper; grievance dismissed. *Re Woodbridge Foam Corporation & U.A.W., Local 112; Morris grievance*, June 5, 1986. E.B. Jolliffe — 21 pages. (26)

**Discharge**

Absence because of disability — grievor reinstated with full seniority. *Re iil Limited & United Brotherhood of Carpenters and Joiners of America, Local 2679; Cicconi grievance*, June 6, 1986. Egan — 5 pages. (27)†

Absence from work for religious reasons — not just cause for discharge; if accommodation could not be worked out then grievor to be considered on lay-off. *Re Stelco Wire Products Company Frost Works & U.S.W.A., Local 3561; Salamon grievance*. See (8), *supra*. (28)\*

Absence without leave — circumstances indicating grievor capable of providing regular attendance in future despite poor record of absenteeism — conditional reinstatement without compensation; grievance allowed. *Re Stelco Inc. & U.S.W.A., Local 8782; Ellis grievance*, June 6, 1986. H.D. Brown - 17 pages. (29)

Absenteeism — grievor relieved of duties; constructive discharge; onus on company to show just cause; onus met. *Re Liquid Carbonic Inc. & U.S.W.A.; Archibald grievance*, June 2, 1986. Kirkwood — 7 pages. (30)

Absenteeism and carelessness using equipment — reinstatement without compensation. *Re Dupont Canada Inc., Ajax Works & Teamsters, Local 1166; Lambert grievance*, May 26, 1986. Majority: H.D. Brown, Phillips; dissent: Werry — 31 pages. (31)

Absenteeism due to physical disability — employer may terminate employment relationship excepting where long-term benefits provided by agreement would be lost — sick leave benefits do not constitute long-term benefit; grievance dismissed. *Re Windsor, Board of Education for the City of & Windsor Women Teachers' Association; Nantais grievance*, June 17, 1986. Samuels — 13 pages. (32)

Absenteeism — greatly exceeded department average; future regular attendance likely; reinstatement conditional on maintenance of average attendance for two years. *Re Lennox and Addington County General Hospital & S.E.U., Local 183; Wittish grievance*, June 11, 1986. Thorne — 16 pages. (33)

Absenteeism while receiving benefits under company benefit plan — reinstatement to status of employee on leave of absence; grievance allowed. *Re Denison Mines Limited & U.S.W.A., Local 5762; Ryan grievance*, June 25, 1986. Freedman — 53 pages. (34)

Breach of employer rule regarding abuse in resident care — grievor had previously requested expert advise which was not forthcoming — grievor did abuse resident contrary to policies; discharge excessive — written reprimand appropriate; grievance allowed in part. *Re Cochrane Temiskaming Resource Centre & O.P.S.E.U., Local 6641; Bell grievance*, June 12, 1986. Boscarion — 4 pages. (35)†

Criminal charges — convicted then acquitted of attempted theft of company property; found guilty by board on balance of probabilities — reinstatement denied; no compensation for period of suspension. *Re Drug Trading Company Limited, Sudbury & Canadian Chemical Workers' Union, Local 11; Roche grievance*, June 20, 1986. Saltman — 14 pages. (36)

Culminating incident — established grievor urinated on public property and progressive disciplinary system had made no impact on him — in light of conduct and past record discharge proper; grievance dismissed. *Re Canada Post Corporation & C.U.P.W.; Thomas grievance*, June 9, 1986. Shime — 5 pages. (37)

Culminating incident—leaving work without authorization—previous disciplinary record was substantial and properly documented; discharge appropriate. *Re Consumers Distributing Company Limited & Teamsters, Local 419; Cantera grievance*, May 29, 1986. Solomatenko — 9 pages. (38)

Driving company car while licence suspended — just cause for discharge. *Re Hendrie and Company Limited & Canadian Brotherhood of Railway, Transport and General Workers, Local 268; McGuire grievance*, June 3, 1986. Kennedy — 8 pages. (39)

Driving company vehicle while impaired — mitigating factors of long service — clear record and personal hardship do not outweigh seriousness of offence — grievor aware of long standing company rule and discharge appropriate to protect employer's vital interests; grievance dismissed. *Re Canada Packers (Walkerton) & U.F.C.W.U.; Weppeler grievance*, May 30, 1986. Majority: Swan, Williamson; dissent: Robbins — 11 pages. (40)

Fighting — just cause for discipline; mitigating factors justifying reinstatement without compensation. *Re Lever Detergents Limited & Teamsters Chemical, Energy and Allied Workers, Local 132; Fendley grievance*, June 14, 1986. Kirkwood — 8 pages. (41)†

Inactive status for 12 months — employer to give prior notice; grievance allowed. *Re Riverdale Hospital & C.U.P.E., Local 70; Bekic grievance*, May 13, 1986. Majority: Brandt, Solberg; dissent: Bresner — 18 pages. (42)

Incompetence — performance assessed by another member of bargaining unit; termination improper. *Re International Playing Card Company Limited & Canadian Automobile Workers, Local 195; Wines grievance*, June 16, 1986. Samuels — 7 pages. (43)†

Infringement of privacy constituting sexual harassment — unrelated previous disciplinary record and mitigating factors; discharge excessive; reinstatement without compensation. *Re Canada Cement Lafarge Limited & E.C.W.U., Local 219; Silver grievance*, May 30, 1986. Emrich — 18 pages. (44)\*

Falsification of employment application — concealment of discharge for performance related problems from two other hospitals grounds for termination; grievance dismissed. *Re LaVerendrye General Hospital & O.N.A.; Edwards grievance*, June 9, 1986. Majority: Springate, Laing; dissent: Ballantyne — 69 pages. (45)

Physical disability — both parties at fault for not clearly communicating intentions; conditional reinstatement ordered. *Re Swift Adhesives Canada Inc. & U.F.C.W.U.; Fiore grievance*, June 2, 1986. M.G. Picher — 20 pages. (46)

Procedure — failure to provide union representation to grievor at point of discharge nullifies discipline imposed; grievance allowed. *Re Toronto, Corporation of the City of & C.U.P.E., Local 79; Burness grievance*, June 12, 1986. T.A.B. Jolliffe — 19 pages. (47)\*

Quit alleged — subjective and objective elements of resignation test demonstrated; grievance dismissed. *Re North Bay Hydro Electric Commission & C.U.P.E., Local 72; Sohm grievance*, June 23, 1986. Baum, Millman, Fortin — 14 pages. (48)

Reduction in work hours and later dismissal with no new reason given — employer may not impose more than one penalty for same offence; grievor reinstated. *Re Acadian Tavern (496479 Ontario) & International Beverage Dispensers and Bartenders, Local 280; Whitman grievance*, June 6, 1986. Hearn — 7 pages. (49)†



Theft — grievor convicted of possession of employer's stolen property; grievance dismissed. *Re Hamilton Clinic (Ontario Cancer Treatment and Research Foundation) & C.U.P.E., Local 794; Bowman grievance*, February 4, 1986. Majority: Palmer, MacDermid; dissent: Bouchard — 10 pages. (50)

Theft — grievor knowingly came into possession of bill folds manufactured by employer — discharge just and reasonable penalty. *Re Cooper Canada Limited & Glass, Pottery, Plastics and Allied Workers, Local 366; Tiwari grievance*, June 5, 1986. Brunner — 13 pages. (51)†

Theft — no mitigating factors; dismissal appropriate. *Re Belleville General Hospital & S.E.U., Local 183; Abrams grievance*, May 20, 1986. Draper — 11 pages. (52)†

Theft and violation of company policy — same evidence of dishonesty — company's policy had not previously been consistently applied — given grievor's long service he was reinstated with full seniority but without approximately 15 months back-pay; grievance allowed in part. *Re Dominion Stores Limited & U.S.W.A., Local 14045; Damsguard grievance*, May 13, 1986. Rayner — 14 pages. (53)

Work performance unsatisfactory — discharge excessive response; reinstatement without compensation for lost earnings. *Re Firestone Steel Products of Canada & U.A.W., Local 27; Breda grievance*, May 28, 1986. Joyce — 8 pages. (54)

### Discipline

Absenteeism — although discipline for absenteeism justified, employer wrongly took into account absenteeism due to legitimate illness in reaching decision to terminate; grievor reinstated. *Re Goodyear Canada Inc. & United Rubber, Cork, Linoleum and Plastic Workers of America, Local 189; group grievance*, June 2, 1986. Boscarior — 8 pages. (55)†

Absenteeism — letter warning of possible termination disciplinary and unjustified. *Re Ottawa General Hospital & O.N.A., Vinet grievance*, May 29, 1986. Majority: Thorne, Gordon; dissent: Stansel — 21 pages. (56)

Altercation in response to unprovoked assault by fellow worker — reprimand substituted for two-day suspension. *Re Ed Mirvish Enterprises Limited & Hotel and Restaurant Employees, Local 75; Leong grievance*, June 2, 1986. Schiff — 9 pages. (57)†

Assaulting fellow employee — no conclusive evidence of assault — same penalty for grievor and fellow employee; suspension revoked; grievance allowed. *Re Air Canada & I.A.M., Local 148; Dixon grievance*, May 29, 1986. Devlin — 10 pages. (58)

Attitudinal problems resulting in suspension — penalty reasonable and effective deterrent; grievance dismissed. *Re Brewers Warehousing Company Limited & United Brewers Warehousing Workers' Provincial Board, Local 278-1; Strong grievance*, June 24, 1986. Lerner — 15 pages. (59)†

Deliberate damage to fellow employees' property — union argued incident was off-duty conduct; based on credibility of witnesses grievor held responsible; parking lot properly considered work place; incident of legitimate concern to employer; two-day suspension upheld. *Re West Park Hospital & O.N.A.; Gordon grievance*, June 9, 1986. Betcherman — 11 pages. (60)†

Demerit system allotting points for innocent absenteeism — patently unreasonable to impose points for non-culpable conduct. *Re F.W. Fearman Company Limited & U.F.C.W., Local P1227; Warry, Wheeler, Botelho and Melo grievances*, May 30, 1986. T.A.B. Jolliffe — 22 pages. (61)†

Driving improperly on employer's property — suspension appropriate; grievance dismissed. *Re Lake Erie Works, Stelco Incorporated & U.S.W.A., Local 8782; Lovell grievance*, February 24, 1986. Majority: Palmer, Storie; dissent: O'Neal — 6 pages. (62)

Insubordination — grievor called at home by supervisor; evidence established grievor was rude on first occasion and later provoked supervisor regarding the matter; written reprimand appropriate; grievance dismissed. *Re Barrie, Corporation of the City of & C.U.P.E., Local 2380; Hulme grievance*, May 20, 1986. Sheppard — 8 pages. (63)†

Insubordination — persons giving order not clearly identified as supervisors — compliance with order not possible and contrary to normal practice — reinstated to former position; grievance allowed. *Re General Motors of Canada Limited, Scarborough, Ontario & U.A.W., Local 303; Antwi grievance*, June 12, 1986. Palmer — 11 pages. (64)

Insubordination proved: one-day suspension justified; procedural irregularities not shown; grievance dismissed. *Re Riverdale Hospital & C.U.P.E., Local 79; Mandalfino grievance*, June 5, 1986. Majority: Kates, Gatien; dissent: McDonald — 17 pages. (65)

Insubordination — actions and language directed towards supervisor meriting same form of discipline but 10 weeks excessive in circumstances — modification of penalty to one-month suspension. *Re Thames Valley Beverages Limited & Soft Drink Workers Joint Local Executive Board of Ontario; Grunsell grievance*, June 20, 1986. Verity — 10 pages. (66)

Insubordination — suspensions of 3 and 5 days for verbal and physical abuse of supervisor upheld — conduct of supervisor in removing time cards and ordering grievors off premises without opportunity to test ability to discharge duties not provocation, given influence of alcohol on grievors' behavior; grievance dismissed. *Re Corning Canada Inc. & United Brewery Workers, Local 304; Phillips and Travers grievance*, June 4, 1986. Kates — 13 pages. (67)

Insubordination — use of abusive and obscene language towards supervisor not established — conduct of union steward in dealing with matter within his authority not insubordinate; grievance allowed. *Re Walker Exhausts, Cambridge & U.S.W.A., Local 2894; Baker grievance*, June 19, 1986. Palmer — 8 pages. (68)

Insubordination — use of offensive language insubordinate but in circumstances mild discipline appropriate — warning letter of apology not forthcoming; grievance allowed. *Re Hamilton Automatic Vending Company Limited & United Cement, Lime, Gypsum and Allied Workers, Local 576; Cochrane grievance*, June 20, 1986. Brent — 16 pages. (69)†

Insubordination — written warning substituted for short suspension. *Re Neptune Meters Limited & U.S.W.A., Local 3813; Ryan grievance*, May 30, 1986. H. Brown — 7 pages. (70)

Momentary clerical carelessness — substitution of notation in file for one-day suspension. *Re Hamilton Civic Hospital & O.N.A.; suspension grievance*, June 16, 1986. Samuels — 6 pages. (71)†

Non-compliance with rule for reporting absences — one-day suspension reduced to written warning for reasonable effort to comply. *Re Johnson Mathey Limited & U.S.W.A., Local 9046; Bulka grievance*, June 11, 1986. Stanley — 8 pages. (72)†

Participation in unlawful strike — equal misconduct carries equal penalty; grievance allowed. *Re Ontario Hydro & C.U.P.E., Local 1000; policy grievance*, May 30, 1986. Burkett, Gallivan, Vincer — 10 pages. (73)

Re-assignment of duties — not constituting disciplinary action; grievance dismissed. *Re Etobicoke, Corporation of the City of & O.N.A.; Wilson grievance*, May 29, 1986. Brunner, Lanigan-Gilmour; addendum: McIntyre — 16 pages. (74)

Refusal to comply with shift change ordered by supervisor — change causing transportation difficulties and expense to grievor — grievor claiming change breached collective agreement — obey and grieve later rule applied; grievance dismissed. *Re Woodbridge Foam Corporation & U.A.W., Local 1934; Yeboah grievance*, May 23, 1986. Majority: Rayner, Sargeant; dissent: Murphy — 10 pages. (75)

Safety infraction — warning letter for unsafe operation of forklift justified; grievance dismissed. *Re Ferranti-Packard Transformers Limited & U.S.W.A., Local 5788; Nonni grievance*, June 5, 1986. Joyce — 8 pages. (76)†

Sexual assault charges — just cause for suspension; grievance dismissed. *Re Oshawa Public Library Board & C.U.P.E., Local 960; Lacourse grievance*, May 30, 1986. Majority: H.D. Brown, Clark; dissent: Solberg — 21 pages. (77)\*

Threatening safety officer — safety officer more credible; suspension reduced to three days. *Re CAE Webster Limited & International Molders and Allied Workers, Local 49; Hazelwood grievance*, May 28, 1986. Foisy — 6 pages. (78)

### Estoppel

Acquiescence of union to seven-day work schedule for almost three years — a period spanning three separate collective agreements — employer's entitlement to rely on union's acquiescence in response to union's grievance. *Re Elliot Lake, Corporation of the Town of & C.U.P.E., Local 170; policy grievance*, May 22, 1986. M.G. Picher, Rex, Grandbois — 11 pages. (79)

Introduction of time-clocks — removal of related language during negotiations for current collective agreement reflected time-keeping practices of the time and not representation that time-clocks would not be reintroduced; grievance dismissed. *Re Ferranti-Packard Transformers Limited & U.S.W.A., Local 5788; policy grievance*, June 10, 1986. Majority: Brent, Cook; dissent: Grasso — 15 pages. (80)

Job posting — employer relied upon union agreement denying temporary employee seniority at time employees brought into bargaining unit — union estopped from claiming temporary employee entitled to preferential consideration over outside applicants for permanent vacancies; grievance dismissed. *Re Connaught Laboratories Limited & E.C.W.U., Local 67; Bloomfield grievance*, June 24, 1986. Hinnegan — 14 pages. (81)†

Representation — practice of paying meal allowances not assurance to union that legal relations intended to be affected — representation therefore not established and employer may rely on eligibility provisions in collective agreement; grievance dismissed. *Re Ontario Public Service Employees Union & Ontario Public Service Staff Union; policy grievance*, June 25, 1986. Majority: Weatherill, Neilsen; dissent: Whyte — 10 pages. (82)

Termination of estoppel — union's actions not terminating estoppel. *Re Southam Murray Printing & Toronto Typographical Union, Local 91; Airmedia grievance*, June 2, 1986. Swan; partial dissent: McLean; dissent: Masuda — 28 pages. (83)\*

### Evidence

Production of company records — union entitled to require company to produce documents that might be relevant and admissible regarding grievance in question; company ordered to produce documents. *Re Consumers Distributing Company & Teamsters, Local 419; Fleming grievance*, June 2, 1986. O'Shea — 9 pages. (84)

Relevance — evidence not reasonably speaking to complaints set down in grievance form; grievance dismissed. *Re Leco Inc. & E.C.W.U., Local 819; group grievance pertaining to lay-off notice*, June 19, 1986. T.A. Jolliffe — 9 pages. (85)†

### Grievance Procedure

Content of grievance — complaint initially made over lay-off and grievance not broad enough to include complaints later arising from recall procedures employer used. *Re Leco Inc. & E.C.W.U., Local 819; group grievance*. See (85), *supra*. (86)†

Improper recovery of monies mistakenly paid — policy grievance not appropriate. *Re St. Joseph's Hospital, London & L.D.S.W.U., Local 220; group and policy grievance*, June 5, 1986. Majority: Kates, Mustard; dissent: McDonald — 18 pages. (87)

Timeliness — missing of time limits alone does not establish substantial prejudice and relief pursuant to *Labour Relations Act*, s. 44(6) granted. *Re Air King Limited & I.A.M., Local Lodge 2243; Nicolosi grievance*, June 6, 1986. Majority: Brent, McDonald; dissent: Hanson — 13 pages. (88)

Time limits — employer prejudiced by late application; grievance dismissed. *Re Hotel Dieu Hospital Windsor & S.E.U., Local 210; policy grievance*, May 26, 1986. Majority: Brandt, Bartlet; dissent: McDonald — 29 pages. (89)

Timeliness — grievance filed seven months after original warning; not a continuing grievance; grievance dismissed. *Re Toronto, Corporation of the City of & C.U.P.E., Local 43; Sciamarella grievance*, April 30, 1986. Majority: Barrett, Milks; dissent: Solberg — 8 pages. (90)

### Holidays

Entitlement while on Workers Compensation — full-time employees entitled to payment for statutory holidays while on Workers Compensation; grievance allowed. *Re Dearness Home (London) & L.D.S.W.U., Local 220; policy grievance*, May 5, 1986. Majority: Ord, Beaulieu; dissent: Yeo — 8 pages. (91)

### Holiday Pay

Entitlement of grievor on Workers Compensation — holiday pay to be difference between Workman's Compensation benefits and holiday pay. *Re Hotel Dieu Hospital & O.N.A., DeJonge grievance*, June 16, 1986. Hearn — 16 pages. (92)†



Entitlement of regular part-time nurses to holiday pay — entitled to same amount as for public holiday under *Employment Standards Act* — no amount owed. *Re Windsor Western Hospital Centre Inc. (I.O.D.E. Unit) & O.N.A.*; June 26, 1986. Majority: Springate, Bartlet; dissent: O'Neil — 55 pages. (93)

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Physical fitness for job — future speculation of disability only impediment to work — reinstated to former position. *Re Camco Inc. & U.S.W.A.*; *Ereiz grievance*, June 23, 1986. Shime — 6 pages. (94)

### Interest Arbitration

Parity with T.T.C. sought — employer's pre-strike settlement offer considered fair and reasonable; parity denied and settlement offer implemented. *Re All-Way Transportation Corporation (Wheel-Trans Division) & A.T.U.*, *Local 113*; *union grievance*, June 23, 1986. H.D. Brown — 33 pages. (95)\*

### Job Evaluation

Grade level — proper to refer to jobs in same and higher classifications in assigning points to ensure rough equivalency maintained; grievance dismissed. *Re Northern Telecom Canada Limited & Communications Workers of Canada, Local 9*; *Fryer grievance*, June 20, 1986. Burkett — 15 pages. (96)

Parties unable to agree on factors to determine appropriate classification — comparison to municipal employers appropriate; parties to submit further calculations. *Re Metropolitan Toronto, Municipality of and Metropolitan Licensing Commission & C.U.P.E.*, *Local 79*; *policy grievance*, June 9, 1986. Kennedy; dissents: Belford, Warrian — 25 pages. (97)

### Job Posting

Allegation of bias in the interview process — evidence did not support conclusion that process was not fair in form or substance — grievor was given due consideration; grievance dismissed. *Re Children's Hospital of Eastern Ontario & O.N.A.*; *Schmid grievance*, June 10, 1986. Carrothers — 19 pages. (98)†

Bilingual preference in job description genuine and properly added — grievance dismissed. *Re Ottawa Civic Hospital & C.U.P.E.*, *Local 576*; *policy grievance*, June 10, 1986. Majority: Fraser, Lapointe; dissent: Head — 13 pages. (99)

Delay by employer in placing successful candidate because no replacement for her position could be found — management's right to assign work in order to maintain efficient operations reasonable in circumstances; grievance dismissed. *Re Elgin-St. Thomas Health Unit & O.N.A.*; *Crane grievance*, May 19, 1986. Welling — 8 pages. (100)†

Sufficient ability demonstrated by grievor — grievor should have been assigned to posted job; grievance allowed. *Re Cornwall General Hospital & C.U.P.E.*, *Local 783*; *individual grievance*, June 12, 1986. Weatherill, Belanger, Redford — 8 pages. (101)

### Job Vacancy

Incumbent assuming position of chairperson of bargaining committee; duties of vacant position assigned to other employees — employer not required to post job vacancy; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited & U.A.W.*, *Local 673*; *Sharpe grievance*, June 1986. Gorsky — 11 pages. (102)

Temporary absence not creating vacancy — grievance dismissed. *Re Ryerson Polytechnical Institute, Board of Governors of & O.P.S.E.U.*, *Local 596*; *policy grievance*, May 22, 1986. Majority: Teplitsky, Shields; dissent: Kaufman — 11 pages. (103)

### Lay-Off

Bumping rights when hours reduced — grievor's job reorganized into another classification — bumping across classifications not allowed; grievance dismissed. *Re Talisman Motor Inn & Hotels, Clubs, Restaurant and Tavern Employees, Local 261*; *Sterlini grievance*, June 2, 1986. Fraser — 12 pages. (104)†

Bumping rights — bumping rights to be exercised in reverse order of seniority; grievance allowed. *Re Cyanamid Canada Inc. & E.C.W.U.*, *Local 21*; *policy grievance*, April 30, 1986. P. Picher — 15 pages. (105)

Qualifications — ability to perform not properly evaluated; grievance allowed. *Re Sunbeam Corporation & U.E.*, *Local 566*; *union grievance*, June 20, 1986. Stanley — 34 pages. (106)†

Qualifications — right to bump less senior employee wrongly refused based on grievor's perceived inability to perform job; grievance allowed. *Re New Dominion Stores Inc. & R.W.D.S.U.*, *Local 915*; *Grimaldi grievance*, June 16, 1986. Wilson — 13 pages. (107)†

Skill and ability — grievors not performing work efficiently; grievance dismissed. *Re Exothermic Co. of Canada Ltd. & U.S.W.A.*; *Thind, Singh, Milojevic and Sidhu grievance*, June 13, 1986. Weatherill — 7 pages. (108)

### Management Rights

Absenteeism control program — inconsistent with collective agreement; grievance allowed. *Re McKellar General Hospital & O.N.A.*; *policy grievance*, June 6, 1986. Majority: Saltman, Butler; dissent: Gordon — 31 pages. (109)\*

Company imposed waiver regarding employer's liability for employees' personal tools applied to newly hired employees only — waiver created different substantive rights for same class of employees — waiver denied union rights to grieve related issues; grievance allowed. *Re DeHavilland Aircraft of Canada Limited & U.A.W.*, *Local 112*; *policy grievance*, June 14, 1986. Baum — 10 pages. (110)\*†

Language of instruction in general studies course in Hebrew Day School — within management's rights; grievance dismissed. *Re Associated Hebrew Schools of Toronto & Association of General Studies Teachers in Hebrew Day Schools*, April 15, 1986. Teplitsky, Bloom, Charney — 7 pages. (111)

### Overtime

Distribution — agreement required allocation of overtime to "those employees normally performing the work" — overtime was improperly assigned to group leader who would perform work in question under "exceptional" circumstances only; grievance allowed. *Re American Standard (Division of Wabco Standard Limited) & U.S.W.A.*, *Local 2000*; *Springall grievance*, June 13, 1986. Hunter — 8 pages. (112)†

Distribution by seniority excepting where performed as a "continuation of work in process" — broad interpretation of relevant article would effectively eliminate company's obligation to distribute overtime by seniority; grievance allowed. *Re Coca-Cola Limited & United Brewery Workers; Kazakevicius grievance*, May 14, 1986. Rayner — 8 pages. (113)

Guidelines regarding even distribution of overtime do not apply in emergency situations: grievance dismissed. *Re C-I-L Paints (York Works) & U.S.W.A., Local 13328; group grievance*, June 12, 1986. T.A. Jolliffe — 14 pages. (114)†

No entitlement when not regularly assigned to work under job classification which required overtime. *Re Multifittings & International Molders and Allied Workers, Local 49; Wickens grievance*, June 9, 1986. Samuels — 3 pages. (115)

Remedy for improper distribution: "In-kind" remedy inappropriate; narrow construction of overtime clause required employer to compensate for "missed opportunity"; grievance allowed. *Re Chromasco (Timminco Limited) & U.S.W.A., Local 4632; Kelly grievance*, June 11, 1986. Frankel — 8 pages. (116)†

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Shiftworkers transferred to day shift — entitled to overtime; grievance allowed. *Re Ford Glass Limited & Aluminum, Brick and Glass Workers; policy grievance*, March 4, 1986. Majority: Palmer, Ortlieb; dissent: Billings — 8 pages. (118)

Work done outside normal shift but not following 8-hour period: entitled to overtime pay for time worked in excess of normal shift hours; grievance allowed. *Re Kelsey-Hayes Canada Limited, Eureka Foundry Plant Woodstock Division & U.A.W., Local 636; Kellestine grievance*, June 20, 1986. Palmer — 6 pages. (119)

### Overtime Pay

Entitlement — company estopped from reneging on foreman's promise to pay grievor overtime despite lack of entitlement under terms of collective agreement; grievance allowed. *Re Sherman Mines, Cliffs of Canada Limited & U.S.W.A., Local 6896; Schwendemann grievance*, June 26, 1986. Boscariol — 4 pages. (120)†

Qualifying hours — hours paid for scheduled employees on statutory holidays count towards qualifying hours necessary for weekly overtime; grievance allowed. *Re Lantic Sugar Limited & U.A.W., Local 222; policy grievance*, June 11, 1986. Teplitsky - 4 pages. (121)

### Probationary Employees

Calculation of probationary period — days worked criteria — overtime hours included in days worked; grievance allowed. *Re Ottawa-Carleton, Regional Municipality of & C.U.P.E., Local 503; Henry, Peck and Schilger grievances*, June 3, 1986. P. Picher, Mallon, Switzman — 10 pages. (122)

Calculation of the probationary period — dispute over calendar days versus days worked — past practice used days worked — days worked not completed; grievance dismissed. *Re Master Brendan Industrial Services Limited & U.S.W.A., Local 7578; Farmer grievance*, May 29, 1986. Samuels, Robertson, Farrell — 4 pages. (123)

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Intervention of third parties — adjournment granted to allow for further interventions. *Re Hamilton-Wentworth, Regional Municipality of & C.U.P.E., Local 5; classification grievance*, June 1986. McCulloch — 5 pages. (124)

Tape recording of proceedings prohibited — grievor's recordings made in violation of board's oral ruling to be held by his solicitor until proceedings completed; interim award. *Re The Confederation College of Applied Arts and Technology & O.P.S.E.U.; Babic grievance*, June 6, 1986. H.D. Brown, O'Neill, Courtenay — 4 pages. (125)

### Promotion

Educational qualifications — fairness of math test in measuring applicant's ability to perform job — grievor not qualified; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited & U.A.W., Local 673; Figueiredo grievance*, June 23, 1986. Mitchnick — 7 pages. (126)†

Qualifications — appointment of unqualified teacher to supervisory position proper; grievance dismissed. *Re Oxford County Board of Education & O.S.S.T.F.; policy grievance*, June 21, 1986. Majority: Samuels, McCleery; dissent: McNeil — 5 pages. (127)

Qualifications — bona fides of requirements and employer's assessment — both proper; grievance dismissed. *Re Toronto Hydro & C.U.P.E., Local 1; Egan grievance*, June 3, 1986. Stanley — 24 pages. (128)†

Qualifications — grievor qualified for promotion. *Re Palmerston Town Manor & C.U.P.E., Local 2037; Tomlin grievance*, May 26, 1986. Egan — 4 pages. (129)

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Entitlement — restricted to vacancies within grievor's department; grievance dismissed. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; union grievance*, May 19, 1986. Welling — 10 pages. (130)

No obligation to promote grievor to position filled while on lay-off: proper application of vacation entitlement provisions but service credits continued to accumulate during lay-off for medical disability not force reduction; grievance partially allowed. *Re Bakelite Thermosets Limited & United Rubber Workers; Polmanter grievance*, June 10, 1986. Howe, Collins, McDermott — 17 pages. (131)

Recalled employee more favourably placed within company than other employees of equal seniority who chose to bump instead of be recalled — preferential treatment not substantiated; grievance dismissed. *Re Sunbeam Corporation & U.E., Local 566; union grievance*, June 20, 1986. Stanley — 9 pages. (132)†

Substantive right — hiring of new employee improper where work substantially the same and grievor capable of performing duties — attempt by employer to rely on competitive clause for filling job vacancies rejected as applies only to competition between employees; grievance allowed. *Re Hodgson's Steel Inc. & U.S.W.A., Local 6460; Zappavigne grievance*, June 6, 1986. Davis — 12 pages. (133)

### Scheduling of Work

Notice of change of shift need not be given individually to vacationing employee where posting requirements met; grievance dismissed. *Re Stelco Inc. Hilton Works & U.S.W.A., Local 1005; Hewer grievance*, June 9, 1986. Majority: McLaren, Storie; dissent: Marshall — 9 pages. (134)

Relief schedule — change improper; grievance allowed. *Re Ford Motor Co. of Canada Ltd. & U.A.W., Local 200; union grievance*, June 12, 1986. Palmer — 6 pages. (135)

### Seniority

Calculation during lay-off: employees retained seniority but did not accumulate additional seniority credits. *Re Normick Perron Inc. & Lumber and Sawmill Workers, Local 2995; seniority listing grievance*, June 10, 1986. Majority: Springate, Ryan, dissent: Fyshe — 30 pages. (136)



Calculation on return to bargaining unit — agreement specified seniority to accrue at certain date — employee in question was in excluded position at that date, therefore she had no seniority; grievor improperly laid-off as a result; grievance allowed. *Re Edward Street Manor Nursing Home & O.N.A.; Dougherty grievance*, June 17, 1986. Emrich — 33 pages. (137)†

Relocation — similar position unavailable at new location — grievor entitled to be hired in another position for which she qualified. *Re Palmerston Town Manor & C.U.P.E., Local 2037; Looman grievance*, June 9, 1986. Egan — 5 pages. (138)†

Transfer of seniority — qualifications period requires transfer after "consecutive" versus "accumulated" days in department — language of relevant clause in agreement more definitive and restrictive than in other clauses; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited & Brewery and General Workers, Component 325; Johnson grievance*, June 12, 1986. Shime — 5 pages. (139)

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Entitlement where illness resulting from hypersensitivity to "second-hand" cigarette smoke — availability of positions within company with better smoking conditions for which grievor could apply; irrelevant; grievance allowed. *Re DeHavilland Aircraft of Canada Limited & U.A.W., Local 673; Torrance grievance*, June 6, 1986. Davis — 10 pages. (140)\*†

Lack of medical documentation — sick pay denied because period of absence could not be verified; grievance dismissed. *Re North Bay Civic Hospital & C.U.P.E., Local 39; Huard grievance*, May 28, 1986. M. Picher, Redford, Gower — 14 pages. (141)

Pregnancy — sick leave includes illnesses which complicate natural pregnancy; grievor's work was not affected by her pregnancy but by serious problems brought on by pregnancy; grievance allowed. *Re Carleton Board of Education & O.S.S.T.F.; Sellers grievance*, June 11, 1986. Majority: Samuels, McNeill; dissent: White — 21 pages. (142)

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Preferential hiring regarding job vacancy — past practice did not eliminate all rights of temporary employees — employer required to give proper consideration to their applications for permanent positions; grievance allowed. *Re Peterborough, Corporation of the City of & C.U.P.E., Local 504; group grievance*, June 3, 1986. Little — 21 pages. (145)†

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Disciplinary transfer alleged — onus of proof on grievor to establish intent to discipline not met. *Re Sudbury Board of Education & Branch Affiliates, O.S.S.T.F.; Finn grievance*, May 13, 1986. Marcotte, Alan, McNeil — 10 pages. (146)

Teacher transferred from college theatre department to business department after return from sabbatical — transfer not disciplinary in nature but reflected program needs and manpower available; grievance dismissed. *Re Humber College & O.P.S.E.U.; Smith grievance*, May 20, 1986. H.D. Brown, Shields; addendum: Robbins — 29 pages. (147)

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Leave for union business — preparing proposals and researching grievances — legitimate requests; grievance allowed. *Re Timmins, Corporation of the City of & C.U.P.E., Local 210; policy grievance*, May 28, 1986. Joyce — 9 pages. (148)†

"Super seniority" rights — union not establishing right; grievance dismissed. *Re Brink's Canada & Teamsters, Local 938; Barnes grievance*, June 25, 1986. Majority: Freedman, Addario; dissent: Barclay — 17 pages. (149)

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Scheduling vacation — announcement of shutdown did not meet fairness requirement in collective agreement. *Re Kenroc Tools Inc. & U.S.W.A., Local 8747; vacation scheduling grievance*, June 3, 1986. R.D. Joyce — 13 pages. (150)†

Postponement of vacation — no surrender of vacation; grievor only entitled to regular rate of pay. *Re Northern Telecom Canada Limited & U.A.W., Local 1535; policy grievance*, June 16, 1986. Egan — 5 pages. (151)†

Scheduling — collective agreement provides for summer vacation production shut-down; in absence of express provision to contrary and in accordance with past practice, maintenance employees still obligated to work during shut-down; grievance dismissed. *Re Johnson Mathey Limited & U.S.W.A., Local 9046; union grievance*, June 14, 1986. Stanley — 11 pages. (152)†

Scheduling — doctrine of promissory estoppel preventing employer from unilaterally introducing a new vacation policy. *Re MacMillan Bloedel Limited & Canadian Paperworkers Union, Local 7135; policy grievance*, June 20, 1986. Boscariol — 11 pages. (153)†

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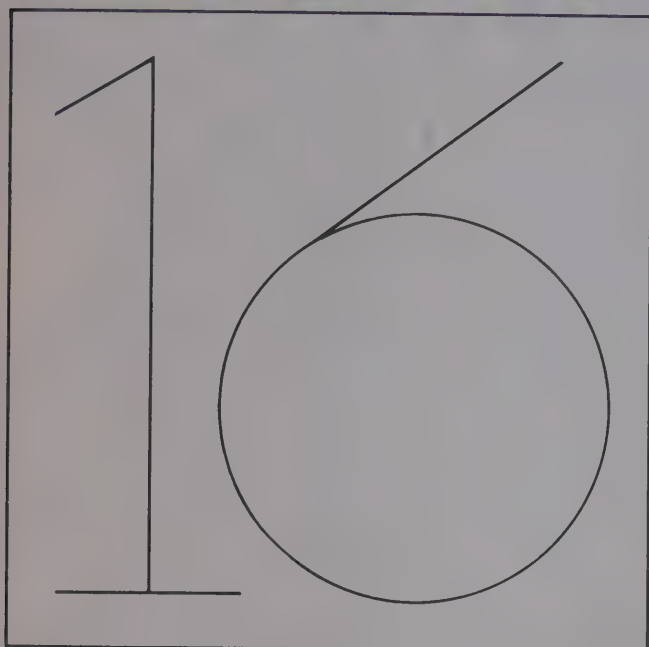
Calculation — service not interrupted by worker's compensation benefit period and in absence of requirements for employee to be on active payroll — grievor entitled to full vacation pay for year; grievance allowed. *Re Air King Limited & I.A.M.; Nicolosi grievance*. See (88), *supra*. (154)

Calculation of previous year's earnings — includes previous year's vacation pay; grievance allowed in part. *Re Romi (Division of Ault Foods Limited) & U.F.C.W.U., Local 175; policy grievance*. See (5), *supra*. (155)\*

Injury sustained while still on employer's property but after lay-off; only entitled to vacation pay had injury occurred before lay-off and notwithstanding receipt of disability benefits from Worker's Compensation Board; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited & U.A.W., Local 112; Panesar grievance*, May 15, 1986. H.D. Brown — 12 pages. (156)

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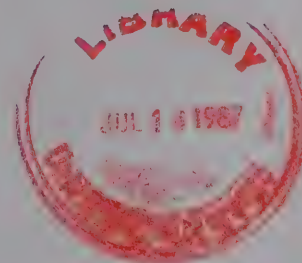


Ontario Ministry of Labour



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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1981, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Arbitrators

The following people have been removed from the Minister of Labour's list of available arbitrators:

*Professor Clarence H. Curtis* — Due to ill health, Professor Curtis is unable to accept arbitration appointments at this time.

*Louissette Duchesneau-McLachlan* — Mrs. Duchesneau-McLachlan has recently been appointed a Judge of the Provincial Court (Family Division) and is no longer available to accept arbitration appointments.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of July, 1986. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.



**Arbitrability**

Collective agreement expired — matter not arbitrable. *Re De Havilland Aircraft of Canada & U.A.W., Local 112; group grievance*, June 25, 1986. Palmer — 7 pages. (1)

Employer invoking s. 45 *Labour Relations Act* — both parties have right to initiate process, not restricted to party initiating grievance. *Re Ottawa-Carleton, Regional Municipality of & C.U.P.E., Local 503; group grievance*, July 14, 1986. Little — 15 pages. (2)\*†

Non-renewal of one year term teaching contract — collective agreement conferring no right to grieve non-renewal unless breach of terms or conditions of collective agreement established; non-renewal occurring as result of grievor's failure to obtain work permit in timely fashion; grievance dismissed. *Re Lycee Claudel & C.U.P.E., Local 2519; Fleury grievance*, June 3, 1986. Roach — 20 pages. (3)† (French award)

Policy and individual grievances cannot be addressed jointly to two employers since each employer has its own collective agreement; grievance arbitrable in accordance only with collective agreement giving rise to that grievance. *Re Metro Global Maintenance and Property Management Services Organization & Labourers' International Union of North America, Local 183; Duggan and policy grievance*, July 18, 1986. Solomatenko — 13 pages. (4)

Section 45 — application for arbitration filed prematurely; grievance dismissed. *Re Great Lakes Power Limited & C.U.P.E., Local 3033; Jones and McRae grievance*, July 21, 1986. Joyce — 14 pages. (5)†

Use of casual employees challenged — agreement provided finality of arbitral awards in substantially identical circumstances; board therefore had no jurisdiction; union to adhere to a previous interpretation. *Re Canada Post Corporation & Canadian Union of Postal Workers: use of casuals grievance*, July 15, 1986. Burkett — 11 pages. (6)

Validity of lay-off: allowing grievance to proceed contrary to express terms of agreement settling all lay-off related disputes. *Re Ault Dairies, Division of Ault Foods Limited & Milk and Bread Drivers, Local 647; Furlotte grievance*, July 8, 1986. Langille — 13 pages. (7)

**Bargaining Unit**

Classification of position as non-union: employer failed to establish job above lowest ranked exclusion in collective agreement; grievance allowed. *Re Black River-Matheson, Corporation of the Township of & C.U.P.E., Local 1451; policy grievance*, July 9, 1986. Dunn, Rukavina, Loiselle — 8 pages. (8)

Engineers excluded under collective agreement — employee performing engineering functions within exclusion; grievance dismissed. *Re Northern Telecom Canada Limited & U.A.W., Local 1837; Bargaining Unit grievance*, July 8, 1986. Weatherill — 7 pages. (9)

**Bereavement Leave**

Overtime assignment considered part of regular working schedule — bereavement pay granted; grievance allowed. *Re Northern Telecom Canada Limited & U.A.W., Local 1915; Palmer grievance*, June 21, 1986. Egan — 6 pages. (10)†

**Call-Out Pay**

Entitlement — employees compensated for being on call not entitled to guaranteed minimum payment if actually called in; grievance dismissed. *Re Etobicoke, Corporation of the City of & City of Etobicoke Civic Employees, Local 185; policy grievance*, July 9, 1986. Draper — 5 pages. (11)†

Grievor on-call and handled work from home by phone entitled to pay; grievance allowed. *Re Haldimand-Norfolk, Regional Municipality of & C.U.P.E., Local 2210; Gibbons grievance*, July 5, 1986. McLaren — 7 pages. (12)

**Classification**

"Cafeteria helpers" seeking reclassification as "cooks" — although grievors do some short-order cooking; cooks' duties include blending and processing soups and sauces; grievances dismissed. *Re Parnell Foods (1981) Limited & R.W.D.S.U., Local 414; Thomas, Dennison, Sales and Raddigan grievances*, July 24, 1986. Weatherill — 8 pages. (13)

Reclassification — grievors performing more complex tasks properly part of higher classification but majority of time spent on duties within present classification; two-part test not satisfied; grievance dismissed. *Re Novatronics of Canada Limited & I.B.E.W., Local 2345; Robertson and Flood grievance*, July 10, 1986. Barton — 10 pages. (14)†

**Collection**

Employer contribution to welfare fund and union dues — payment ordered. *Re New Heights Manufacturing Limited & International Ladies Garment Workers; policy grievance*, July 4, 1986. Hearn — 4 pages. (15)†

**Contracting Out**

Construction work — bargaining unit size not reduced nor normal growth restricted; grievance dismissed. *Re Algoma Steel Corporation (Tube Division) & U.S.W.A., Local 5595; policy grievance*, June 26, 1986. McKechnie — 8 pages. (16)

Die-making process — collective agreement did not prohibit but protected employees in the event of contracting out; grievance dismissed. *Re Dominion Forge Company Limited & U.A.W., Local 195; contracting-out grievance*, July 22, 1986. Weatherill — 8 pages. (17)

Expensive and specialized equipment used by contractor — contracting out proper; grievance dismissed. *Re Algoma Steel Corporation Limited & U.S.W.A., Local 2251; policy grievance*, July 10, 1986. Majority: Davis, Forbes; dissent: Woodcock — 9 pages. (18)

Installation of fire alarm system — legitimate work scheduling problems created "inability to do work in efficient manner within production schedules"; grievance dismissed. *Re Computing Devices & Employees' Association Computing Devices Co.; policy grievance*, July 4, 1986. Stanley — 16 pages. (19)†

Leasing of replacement loading machinery and operator — employer entitled under collective agreement to contract out on certain occasions but employer to pay contractor's employee's union costs. *Re Normick Perron Inc. & Lumber and Sawmill Workers, Local 2995; union grievance*, June 24, 1986. Weatherill, Ryan; dissent: Fyshe — 28 pages. (20)

**Discharge**

Absenteeism — extensive absenteeism record but, since grievor only received one prior disciplinary penalty in nine and one-half years, discharge too severe; conditional reinstatement without compensation. *Re Tecumseh Metal Products Limited & U.A.W., Local 195; Keni grievance*, June 30, 1986. Palmer — 6 pages. (21)

Alcoholism — when condition imposed by company after mandatory referral for treatment was not met and employee was discharged, union did not lose right to grieve discharge; 5-day suspension and reinstatement substituted for discharge. *Re Ontario Hydro & Ontario Hydro Employees' Union, Local 1000; Phillips grievance*, June 27, 1986. McCamus, McHenry, Vincer — 37 pages. (22)

Alcohol related accident — discharge reduced to 10-month suspension conditional on completion of treatment. *Re Hamilton Street Railway & A.T.U., Local 107; Smith grievance*, June 20, 1986. McCulloch, Burke, Houle — 6 pages. (23)

Absenteeism due to illness — termination not contrary to collective agreement. *Re The Greater Niagara General Hospital & O.N.A., Sharpe grievance*, May 23, 1986. Majority: Boscariol, Hassell; dissent: Paliare — 22 pages. (24)

Absenteeism — mitigating factors — reinstatement with conditions. *Re Celanese Canada Inc. & E.C.W.U., Local 9670; Sorensen grievance*, June 20, 1986. Rayner, Harris, More — 7 pages. (25)

Alcoholism — poor work performance and absenteeism due to alcohol abuse; discharge justified; grievance dismissed. *Re Ontario Hydro & C.U.P.E. 1000; Harkonen grievance*, July 28, 1986. Majority: Swan, Coles; dissent: Vincer — 15 pages. (26)

Assault and insubordination — physical confrontations with other employees — discharge justified; grievance dismissed. *Re Toronto Star & Graphic Communications Union, Local N-1; DeFilippis grievance*, July 30, 1986. Baum — 9 pages. (27)

Assault upon patient alleged — employer not meeting burden of proof; reinstatement with compensation. *Re Deep River and District Hospital & O.P.S.E.U.; LaMontagne grievance*, July 11, 1986. Majority: Samuels, Switzman; dissent: Pearlman — 12 pages. (28)

Carelessness: grievor involved in two serious accidents — just cause for discharge; grievance dismissed. *Re Browning-Ferris Industries Limited & Teamsters, Local 880; Richardson grievance*, July 28, 1986. Samuels — 7 pages. (29)†

Child care worker leaving children unsupervised — discharge not unduly severe in circumstances; grievance dismissed. *Re Youth Services Bureau of Ottawa-Carleton & C.U.P.E., Local 2195; Nardone grievance*, July 16, 1986. Wright — 11 pages. (30)†

Criminal conduct—selling hashish at work — allegations proved; just cause for dismissal; grievance dismissed. *Re Chromalox Canada & U.A.W.; Newman grievance*, July 18, 1986. Weatherill — 8 pages. (31)

Driving while licence suspended — discharge reduced to six and one-half month suspension. *Re Bell Canada & Communication Workers of Canada; Oliver grievance*, July 9, 1986. Samuels, Churchill-Smith, Switzman — 7 pages. (32)

Duty of fidelity to employer — grievor using employment status for own gain — suspension appropriate; grievance allowed in part. *Re Queensway-Carleton Hospital & C.U.P.E., Local 2875; Griffith grievance*, June 3, 1986. Abbott, Mustard, Hinton — 18 pages. (33)

Failure to collect sales price from co-worker: believed co-worker would pay later — suspension and warning substituted for discharge. *Re New Dominion Stores Inc. & R.W.D.S.U., Local 414; Fancy grievance*, June 30, 1986. Majority: Brent, McDonald; partial dissent: Carrick — 14 pages. (34)

Failure to co-operate: damages but no reinstatement. *Re Rio Algom Limited & I.U.O.E., Local 796; McGuire grievance*, July 8, 1986. Hinnegan — 7 pages. (35)

Falsification of illness: anti-union animus justifying reinstatement without compensation. *Re Mack Canada Inc. & I.A.M., Lodge 2281; Peers grievance*, July 7, 1986. Saltman — 20 pages. (36)

Failure to notify of intended absence — failure to notify not justified in present circumstances and discharge upheld; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Carmody grievance*, July 10, 1986. O'Shea — 12 pages. (37)

Fighting — grievor instigated physical confrontations and attempted to mislead and deceive rather than own up to conduct; grievance dismissed. *Re Walbar Canada Inc. & U.S.W.A., Local 8991; Nguyen grievance*, June 20, 1986. Joyce — 6 pages. (38)†

Horseplay injuring fellow employee — action common form of horseplay at plant; grievor reinstated. *Re Hendrickson Canada Limited & U.S.W.A., Local 8773; Armstrong grievance*, July 7, 1986. Dunn — 5 pages. (39)

Insubordination — no serious challenge to management authority — suspension appropriate; suspension substituted for discharge. *Re Standard Paving Company & Teamsters Local 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers; Roy grievance*, June 20, 1986. Majority: Solomatenko, Fryzuk; dissent: Herbert — 11 pages. (40)

Negligence — failure to check all steps of computer programme for payment of insurance premiums by pre-authorized cheque plan; double deduction of monthly premiums resulting — isolated incident occurring in haste to repair computer breakdown — good past record — substantial prejudice to employer not established; 1-month suspension substituted. *Re Union of Canada Life Assurance Company & O.P.E.I.U., Local 225; Gingras grievance*, May 21, 1986. Majority: Roach, Dufour; dissent: Leboeuf — 24 pages. (41) (French award)

Off-duty altercation with supervisor — application of force established but only indirectly related to work and not witnessed by other employees — absence of disciplinary record and less serious nature of physical contact supported substitution of 2-week suspension in lieu of discharge. *Re Smith Falls, Corporation of the Town of, & C.U.P.E., Local 1664; Doyle grievance*, July 11, 1986. Frankel — 14 pages. (42)†

Permanent partial disability — employer obligated to try to find suitable replacement job; reinstatement to new position; grievance allowed. *Re TecSyn Canada Ltd. (Niagara Structural Construction/Fabrication Division and Niagarasteel Service Centre Division) & U.S.W.A., Local 7012; Da Silva grievance*, July 2, 1986. Haefling — 20 pages. (43)†

Quit alleged — notice of intention to resign clear and confirmed by subsequent conduct — employer entitled to accept and consider or ignore later attempt to withdraw; grievance dismissed. *Re Tenant Hotline Inc. & O.P.S.E.U., Local 525; Byrne grievance*, June 30, 1986. Dunn — 7 pages. (44)†



Racist and threatening remarks made to co-worker: just cause for termination; grievance dismissed. *Re Mount Sinai Hospital & S.E.I.U., Local 204; Ramganesch grievance*, June 30, 1986. Majority: Brent, Boettcher; dissent: McDonald — 14 pages. (45)

Removal of employer's property for personal use — serious breach of trust; grievance dismissed. *Re Ontario Hydro & Society of Ontario Hydro Professional and Administrative Employees; Morrow grievance*, April 5, 1986. Swinton — 19 pages. (46)

Sexual harassment: bus driver made sexual advancement to female passenger — owing to his seniority, grievor reinstated in another position within company. *Re Hamilton Street Railway Company & A.T.U., Local 107; Jensen grievance*, July 11, 1986. Brandt, Billings, Burke — 13 pages. (47)

Slow-down: deliberately slow operation of railway engine while transporting materials — dismal disciplinary record — discharge justified; grievance dismissed. *Re Stelco Inc., Lake Erie Works & U.S.W.A., Local 8782; Earle grievance*, July 3, 1986. Hinnegan — 6 pages. (48)

Theft — discharge justified by evidence; grievance dismissed. *Re Boots Drug Stores (Canada) Limited & Retail, Commercial and Industrial Union, Local 206; Sandford grievance*, July 15, 1986. Duchesneau-McLachlan — 7 pages. (49)†

Theft — reinstatement not appropriate; grievance dismissed. *Re Oshawa Foods & U.F.C.W.U., Local 206; Kilik grievance*, July 22, 1986. Joyce — 10 pages. (50)†

Theft alleged — credibility of witnesses at issue; onus on employer to establish offence not met; grievance allowed. *Re Bilt-Rite Upholstering Company Limited & U.S.W.A., Local 32; Singh grievance*, June 26, 1986. Rayner — 20 pages. (51)

Theft suspected — no obligation to provide explanation; reinstatement without compensation. *Re Boots Drug Stores (Canada) Limited & Retail, Commercial and Industrial Union, Local 206; Boddam grievance*, June 12, 1986. Majority: R.J. Roberts, Rudrum; dissent: Crisp — 14 pages. (52)

Unauthorized absence — breach of terms of conditional reinstatement; discharge upheld. *Re Denison Mines Limited & U.S.W.A., Local 5762; Zygmunt grievance*, July 14, 1986. Freedman — 23 pages. (53)

## Discipline

Abrupt and evasive manner of flight attendant not substantiated — warning letter unjustified; grievance allowed. *Re Worldways Canada Limited & C.A.L.F.A.A.; D'Alfonso grievance*, July 3, 1986. Devlin — 16 pages. (54)

Absence from work and insubordination — refusal to recognize managerial authority; suspension reduced by one day but grievance denied in other respects. *Re Quality Meat Packers Limited & U.F.C.W.U.; Goncalves grievance*, July 25, 1986. Solomatenko — 13 pages. (55)†

Carelessness — warning letter re inaccurate loading of goods for shipment justified; grievance dismissed. *Re Russelsteel Inc. & U.S.W.A., Local 6473; Carty grievance*, June 10, 1986. Joyce — 7 pages. (56)

Absence without justification alleged — suspension removed from record and full compensation ordered; grievance allowed. *Re Hoffman Meats Inc. & U.F.C.W.U., Local 139; Glen grievance*, June 30, 1986. Brent — 9 pages. (57)

Dangerous work situation created by grievor — discipline appropriate; grievance dismissed. *Re Algoma Steel Corporation Limited & U.S.W.A., Local 2251; Woodcox grievance*, June 25, 1986. Majority: Barton, Forbes; dissent: Woodcock — 11 pages. (58)

Demotion following criminal charges — no grounds for disciplinary action; grievance allowed. *Re Toronto, City of & Metropolitan Toronto Civic Employees' Union, Local 43; Purdy grievance*, April 25, 1986. Majority: McKechnie, Tate; dissent: Milks — 12 pages. (59)

Dereliction of duty: failure to remain in required work area; 3-day suspension reduced to one day; grievance partially allowed. *Re Labatt's Ontario Breweries & United Brewery Workers, Local 304; Hoffman grievance*, July 11, 1986. Brunner — 13 pages. (60)

Failure to complete overtime shift: 5-day suspension excessive; substitution of discipline on progressive basis; written warning for one grievor and 1-day suspension for other. *Re Collingwood Shipyards & U.S.W.A., Local 6320; Hendry and Hendry grievances*, July 4, 1986. Boscarol — 5 pages. (61)†

Harassment in form of unwarranted discipline by employer not substantiated: 7-day suspension too severe and reduced to five days. *Re V/S Services & Workers' Union at Queen Elizabeth Hospital; Moss grievance*, July 7, 1986. Shime — 4 pages. (62)

Insubordination: grievor failed to meet obligation to provide information on work progress — 3-day suspension reduced to one day. *Re Cannon Incorporated, Tamper Division & International Molders and Allied Workers, Local 28; Bishop grievance*, July 7, 1986. Devlin — 10 pages. (63)

Insubordination — grievor misunderstood order; grievance allowed. *Re Stelco Inc. & U.S.W.A., Local 8782; Robicheau grievance*, July 15, 1986. Majority: Burkett, Jones; dissent: Luborsky — 16 pages. (64)

Insubordination — grievor suspended for refusal to follow orders; grievance dismissed. *Re GTE Sylvania Canada Limited & U.E., Local 539; Cox grievance*, July 18, 1986. Foisy — 7 pages. (65)†

Insubordination: verbal abuse of supervisor — version of employer favoured assessment of credibility and three and one-half day suspension reasonable given dual nature of offence; grievance dismissed. *Re Reynold's Aluminum Company of Canada Limited & International Molders and Allied Workers, Local 28; Polson grievance*, July 15, 1986. McLaren — 11 pages. (66)

Lateness — bad record and proof in two incidents justified 2-day and 4-day suspensions; grievance dismissed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Learning grievance*, July 7, 1986. Kates — 8 pages. (67)

Leaving work without permission, extending break and failing to punch time card during break — dishonesty found in attempt to extend break — one and a half-day suspension upheld; grievance dismissed. *Re Weston Bakeries Limited & Milk and Bread Drivers, Local 647; Attardo grievance*, July 10, 1986. Wilson — 10 pages. (68)†

Negligence in care of nursing home patient — suspension reduced; grievance allowed in part. *Re Cambridge Country Manor & S.E.I.U., Local 204; Bleich grievance*, June 23, 1986. R.J. Roberts — 7 pages. (69)†

Patient abused by R.N.A. — 3-day suspension justified. *Re Parkwood Hospital and McCormick Home (Women's Christian Association of London) & L.D.S.W.U., Local 220; Walker grievance*, July 8, 1986. Majority: Devlin, McDonald; dissent: Heffernan — 11 pages. (70)

Rudeness to patient alleged — not proven grievor made remark; grievance allowed. *Re Sunnyside Home (Regional Municipality of Waterloo) & L.D.S.W.U., Local 220; Murray grievance*, June 12, 1986. Majority: R.J. Roberts, Stewart; dissent: Boehmer — 21 pages. (71)

Sleeping on job — employer unable to prove grievors asleep; grievance allowed. *Re Air Canada & I.A.M.; Taylor and Koutsokostas grievance*, July 18, 1986. Swan — 11 pages. (72)

Tampering with computer system prior to a strike: 1-week suspension justified but 6-month demotion excessive. *Re Ontario Hydro & Ontario Hydro Employees Union, Local 1000; Lauzon and Couvier grievance*, July 3, 1986. Burkett; partial dissent: Abbott; dissent: Vincer — 26 pages. (73)

Transfer in work assignment — reassignment to duties of same classification in different location not disciplinary — remarks of supervisor on work quality not part of work record; grievance dismissed. *Re Bakelite Thermosets Limited & United Rubber Workers, Local 380; policy grievance*. Emrich — 13 pages. (74)†

Union officials refused to stop following supervisor — written warning appropriate; grievance allowed in part. *Re De Havilland Aircraft of Canada Limited & U.A.W., Local 112; O'Neil grievance*, July 22, 1986. Barton — 15 pages. (75)†

Use of excessive force upon resident alleged — onus of proof not met; grievances allowed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; Hamilton and Lovi grievances*, July 16, 1986. Dunn — 12 pages. (76)

Work performance — failure to meet standards of cleanliness established on preponderance of evidence — not necessary or beneficial to make disciplinary process formal and rigid and 2-day suspension for second offence, in lieu of written warning, proper; grievance dismissed. *Re Canada Malting Company Limited & U.F.C.W.U., Local 281; Miller grievance*, June 30, 1986. Aggarwal — 28 pages. (77)†

Work performance: momentary inattention to job duty resulted in accident — no evidence of wanton carelessness or wilful disregard for safety or property; 2-week suspension excessive and 3-day suspension substituted. *Re Harris Steel Group Inc. & International Association of Bridge, Structural and Ornamental Iron Workers, Local 734; Luey grievance*, July 10, 1986. Hinnegan — 6 pages. (78)

### Employment Status

Casual employee: grievor notified of separation on expiry of 6-month qualifying period for permanent status — offer of continued employment in separate bargaining unit and service credits could not be transferred; not entitled to change in employment status; grievance dismissed. *Re North York, Corporation of the City & North York Civic Employees' Union, Local 94; Huck grievance*, July 5, 1986. Dunn — 6 pages. (79)†

Compensable injury — seasonal employee entitled to retain service credits on rehire after period of compensation; period deemed to be one of employment within terms of grievor's normal cycle of employment; grievance allowed. *Re Toronto, Corporation of the City of & Metropolitan Toronto Civic Employees, Local 43; King grievance*, June 30, 1986. Betcherman — 7 pages. (80)†

### Estoppel

Employer sought to change plant's rotation system — union relied on employer's representation and dropped issue during negotiations; employer estopped from making change; grievance allowed. *Re Consumers Glass Company Limited & Aluminum Brick and Glass Workers International Union, Local 269; union grievance*, July, 1986. Stanley — 16 pages. (81)\*†

Work schedule change — practice of securing employee acceptance of schedule change limited to single act and not sufficiently long-standing as to establish representation — employer not estopped from relying on right to introduce change; grievance dismissed. *Re Belleville General Hospital & S.E.I.U., Local 183; group grievance*, July 2, 1986. Draper — 8 pages. (82)†

### Grievance Procedure

Employer objected to advancing of grievance — employer's actions indicated agreement to expedite; arbitrator to hear grievance. *Re Ford Motor Company of Canada & U.A.W., Local 707; group grievance*, June 6, 1986. Palmer — 19 pages. (83)

Timeliness: Union failed to file grievance on time — no reasonable grounds for extension; grievance dismissed. *Re Kruger Incorporated & Canadian Paperworkers Union; Leroux grievance*, June 25, 1986. Palmer — 11 pages. (84)

### Health and Safety

Supervisor threatened grievor if any more complaints made under *Occupational Health and Safety Act* — supervisor violated *Act*; grievance allowed. *Re Robert Hunt Corporation & United Brotherhood of Carpenters and Joiners of America, Local 3054; policy grievance*, June 17, 1986. R.J. Roberts — 17 pages. (85)†

### Holiday Pay

Qualifying days: resignation at end of holiday — presumption that holidays earned benefit and onus on employer to explain denial not satisfied; grievance allowed. *Re Spar Aerospace Limited & Spar Professional and Allied Technical Employees Metropolitan Toronto; Fazekas grievance*, July 9, 1986. Shime — 5 pages. (86)

### Job Evaluation

Operation time standards — report prepared by Industrial Engineer setting rates of time within which certain functions within clothing and textile plant are to be completed. *Re Weston Apparel Manufacturing Company & Toronto Joint Board, Amalgamated Clothing and Textile Workers; piece rate grievance*, July 3, 1986. Teplitsky — 11 pages. (87)

### Job Posting

Qualifications — grievor possessing sufficient janitorial experience to be awarded job; grievance allowed. *Re Thunder Bay, Corporation of the City of & C.U.P.E., Local 87; Portelance grievance*, July 22, 1986. Wilson — 16 pages. (88)†

Specifications of locations and duties not required for particular job posted; grievance dismissed. *Re Toronto General Hospital & C.U.P.E., Local 2001; policy grievance*, March 21, 1986. Swinton, Robbins, Hollister — 9 pages. (89)

### Lay-Off

Ability to perform work established — compensation for lost time and benefits awarded. *Re Atomic Energy of Canada Limited & P.S.A.C., Local 00358; Gupta grievance*, July 9, 1986. Hinnegan — 5 pages. (90)



Bumping rights — senior employees must be able to fulfil normal requirements of job before being able to bump into it — also entitled to familiarization period. *Re Denison Mines Limited & U.S.W.A., policy grievance*, July 29, 1986. Springate — 16 pages. (91)

Permanent reduction of work force — permanent employee laid off instead of temporary one; reinstatement with compensation; grievance allowed. *Re Sterling Drug Limited & E.C.W.U., Local 435; Dullard grievance*, July 17, 1986. Davis — 7 pages. (92)†

Qualifications — grievor entitled to practical test of ability; entitled to bump on passing. *Re Ivaco Rolling Mills & U.S.W.A., Local 7940; Carriere grievance*, July 8, 1986. Adell — 16 pages. (93)

### Leave of Absence

Union business — denial of leave on basis of production requirements improper in the face of express language requiring employer to allow leave where allotment not exhausted and reasonable advance notice given; grievance allowed. *Re Standard-Modern Technologies & U.S.W.A., Local 3252; policy grievance*, July 2, 1986. E.B. Jolliffe — 21 pages. (94)†

### Management Rights

Employer rules — implementation of policy contrary to terms of notice and consultation in collective agreement; standard of reasonableness for unilateral introduction of employer rules not met; grievance allowed. *Re St. Michael's Hospital & O.N.A., policy grievance*, July 4, 1986. Draper — 9 pages. (95)†

Employer rules — management has right to institute attendance control program designed to reduce absenteeism; grievance dismissed. *Re Labatt's Ontario Breweries Limited & National Brewery Workers Union, Local 1; policy grievance*, July 11, 1986. Brandt — 13 pages. (96)

### Overtime

Distribution — employer within rights to assign weekend driving to casual employees; grievance dismissed. *Re Gelco Express Limited & Teamsters Union, Local 880; Hamilton and Kocsis grievances*; June 26, 1986. Hinnegan — 7 pages. (97)

Distribution — unequal distribution of overtime hours amongst employees; damages awarded. *Re Standard-Modern Technologies & U.S.W.A., Local 3252; group grievance*, July 2, 1986. McLaren — 17 pages. (98)

Distribution inequitable — grievor given right of first refusal for future overtime; grievance allowed. *Re Windsor, Corporation of the City of & C.U.P.E.; Marino grievance*, July 28, 1986. Samuels — 8 pages. (99)†

Entitlement where grievor on vacation — employer not entitled to determine availability; grievance allowed. *Re Eldorado Resources Limited & U.S.W.A., Local 13173; Bevan grievance*, June 20, 1986. Palmer — 7 pages. (100)

Entitlement — work assigned to employee in lower classification — no violation of agreement; grievance dismissed. *Re Accurcast Die Casting Limited & International Molders' and Allied Workers' Union, Local 93; Dumais grievance*, July 2, 1986. Weatherill — 7 pages. (101)

Entitlement — work performed not within grievor's classification; grievance dismissed. *Re Ault Dairies & Milk and Bread Drivers, Local 647; Schulte grievance*, July 12, 1986. E.B. Jolliffe — 15 pages. (102)†

Improper overtime assignment — compensation payable to grievor even though not most senior entitled employee — employer not faced with superior claim to assignment and evidence of past practice insufficient to permit deviation in grievor's right under collective agreement; grievance allowed. *Re Hamilton Street Railway Company & Amalgamated Transit Union, Local 107; Steele grievance*, July 8, 1986. H.D. Brown — 16 pages. (103)

Policy of requiring employees to agree to work both weekend shifts as condition of overtime assignment — policy inapplicable given earlier decision to split the particular assignment between two employees; compensation ordered; grievance allowed. *Re Phillip's Cables Limited & U.S.W.A., Local 7276; Payne grievance*, July 11, 1986. Devlin — 14 pages. (104)†

Work performed outside "standard shift" — "standard shift" defined by reference to individual employee not department; grievance dismissed. *Re Beaver Lumber Company Limited & Teamsters Union Local 419; policy grievance*, July 14, 1986. Brandt — 6 pages. (105)

### Overtime Pay

Calculation — C.O.L.A. adjustment based on actual rate of overtime; grievance allowed. *Re E.R. St. Denis & Sons Limited & U.A.W., Local 195; Sharon grievance*, July, 1986. Gorsky — 11 pages. (106)

Alteration of working hours for one day only does not trigger overtime provisions — grievance dismissed. *Re Brampton, Corporation of the City of & C.U.P.E., Local 831; group grievance*, July 8, 1986. Barton — 13 pages. (107)†

Entitlement — grievors entitled to overtime pay for one 8-hour shift in 24-hour day; to permit payment of overtime for second 8-hour shift would be pyramiding benefits and contrary to express term of collective agreement; grievance dismissed. *Re Firestone Canada Inc. & United Rubber Workers, Local 113; Richards and Dzurban grievance*, June 25, 1986. Joyce — 7 pages. (108)†

### Pensions

Retired employees re-hired: retired employee re-employed as consultants not entitled to both pension and wages; grievance allowed. *Re Standard Tube Canada Inc. & National Automobile Workers, C.W.A., Local 636; union grievance*, June 17, 1986. Joyce — 7 pages. (109)

### Premium Pay

Shift Premiums — compensating purpose of shift premiums meant they applied when any work was done during night shift not only when entire shift was worked; entitlement established. *Re Labatt's Ontario Breweries & Brewery Workers' Union, Local 173; shift premium grievance*, July 18, 1986. Weatherill — 10 pages. (110)

### Probationary Employee

Arbitrability of discharge grievance — substantive right of probationary employee to grieve discharge provided in collective agreement; grievance arbitrable. *Re Scarborough General Hospital & C.U.P.E., Local 1487; Holland grievance*, July 24, 1986. Majority: Saltman, McDonald; dissent: Laing — 18 pages. (111)

### Procedure

Labour Board considering successor rights dispute affecting grievance procedure — adjournment appropriate. *Re Dominion Stores Limited & R.W.D.S.U., Local 414; policy grievance*, July 8, 1986. Majority: Weatherill, McKeown; dissent: Solberg — 11 pages. (112)

## Promotion

Qualifications — assessment of grievor's application improper; no authority to order placement of grievor in position and matter remitted to employer for reconsideration. *Re Sunnybrook Hospital & S.E.I.U., Local 777; Ker grievance*, July 8, 1986. E.B. Jolliffe — 28 pages. (113)†

Qualifications — grievor lacking requisite skills; grievance dismissed. *Re Twinpak Inc. & International Woodworkers of America, Local 2-233; Piwowar grievance*, July 24, 1986. Majority: Saltman, Futterer; dissent: Pointon — 18 pages. (114)

Qualifications — seniority only applied where applicants qualifications and ability equal; grievance dismissed. *Re Owen Sound Public Utilities Commission & C.U.P.E., Local 2496; Henderson grievance*, June 20, 1986. Langille — 6 pages. (115)

Qualifications — seniority paramount where skill and ability equal; job awarded to grievor; grievance allowed. *Re Peterborough Civic Hospital & O.N.A.; Robinson grievance*, July 2, 1986. Davis — 12 pages. (116)\*†

## Recall

Failure to report for work — method of notification which eliminates seniority rights questioned; reinstatement with compensation; grievance allowed. *Re American Can Canada Inc. & I.A.M., Lodge No. 863; Yager grievance*, June 27, 1986. Solomatenko — 21 pages. (117)

## Redundancy

Board of Education not required to accommodate employee made redundant — seniority did not overcome employee's lower qualifications — grievance dismissed. *Re Peterborough County Board of Education & O.S.S.T.F., District 18; Hood grievance*, July 11, 1986. Majority: McKechnie, McCleery; dissent: McNeil — 12 pages. (118)

## Relocation Expenses

Reimbursement claimed for relocation expenses to Quebec City resulting from curtailment of appointment after only half of the 18-month term: acceptance of position by grievor predicated on assumption that term was eighteen months; grievance allowed. *Re Public Service Alliance of Canada & Canadian Union of Labour Employees, Local 1; Roy grievance*, April 25, 1986. Roach — 4 pages. (119)† (French award)

## Safety

Employer imposed \$40 limitation on purchase of safety shoes — limitation in violation of collective agreement; reimbursement of contributions made during present collective agreement over \$40 limit ordered; policy grievance allowed; individual grievance dismissed. *Re Parkwood Hospital and McCormick Home & L.D.S.W.U., Local 220; policy grievance and Vowles grievance*, June 27, 1986. Watters — 8 pages. (120)†

Provision of safety boots — union estopped from claiming company responsible for providing employees with safety boots; grievance dismissed. *Re McDonnell Douglas Canada Limited & U.A.W., Local 1967; union grievance*, June 26, 1986. Rayner — 14 pages. (121)\*

## Seniority

Merger of companies — "dovetailing" to apply to owner-operators. *Re Kwikasair Express and T.N.T. Courier & Teamsters, Local 938; merger and seniority grievance*, July 8, 1986. Majority: Burkett, Barclay; dissent: Coltrinari — 15 pages. (122)

## Separation Allowance

Entitlement — grievor's spouse and family moving to location to which grievor had been temporarily transferred; relocation occurring after position terminated; entitlement not established; grievance dismissed. *Re Public Service Alliance of Canada & Canadian Union of Labour Employees, Local 1; Roy grievance*, May 21, 1986. Roach — 10 pages. (123)† (French award)

## Sick Pay

Calculation — grievors entitled to recognition of part-time service in determining percentage of salary payable under sick leave plan; grievance allowed. *Re Welland County General Hospital & O.N.A.; group grievance*, July 10, 1986. T.A.B. Jolliffe — 32 pages. (124)\*†

Eligibility for benefits — company retained exclusive jurisdiction to determine eligibility for sick pay benefits; grievance denied. *Re F.W. Woolworth Company Limited & R.W.D.S.U., Local 414; Pabla grievance*, July 18, 1986. Majority: Verity, Sargeant; dissent: Barclay — 7 pages. (125)

Entitlement — collective agreement signed after grievor injured — grievor entitled to sick pay benefits under terms of new collective agreement; grievance allowed. *Re Welland County General Hospital & O.N.A.; Lowes grievance*, July 4, 1986. Kirkwood, Dixon, Mayne — 7 pages. (126)

Length of service — continuous service includes prior part-time work; grievor entitled to full wage compensation under disability plan; grievance allowed. *Re Alexandra Marine and General Hospital & O.N.A.; Straughan grievance*, July 25, 1986. Hunter — 10 pages. (127)†

Length of service — no interruption in service when grievor switched from part-time to full-time work; grievance allowed. *Re Salvation Army Grace Hospital, (Windsor) & O.N.A.; Solima grievance*, July 9, 1986. R.J. Roberts — 13 pages. (128)\*†

## Travel Allowance

Parties unable to agree on question of automobile expense allowance — board supplied final and binding clause for retroactive insertion into collective agreement. *Re Ottawa-Carleton Regional Health Unit & Civic Institute of Professional Personnel; automobile expense allowance grievance*, July 21, 1986. Majority: Brunner, McIntyre; dissent: Yeo — 11 pages. (129)

## Union Security

Hiring without requiring union membership or paying union dues — settlement reached between parties; grievance allowed. *Re Courtice Auto Wreckers Limited & I.U.O.E., Local 793; union grievance*, June 26, 1986. Hearn — 5 pages. (130)

## Vacations

Scheduling — no obligation for employer to provide vacation replacement; grievance dismissed. *Re Consumers Glass Co. Ltd. & Aluminum Brick and Glass Workers International, Local 269; Wilson grievance*, July 8, 1986. Stanley — 11 pages. (131)†

## Vacation Pay

Entitlement — when on disability leave employer required to pay employees on weekly indemnity (disability leave) vacation pay according to terms of that agreement; grievance allowed. *Re Norton Canada Ltd. & U.A.W., Local 397; union grievance*, July 28, 1986. Weatherill — 8 pages. (132)



### Wages

Employer altered pay scales and anniversary rates under collective agreement by applying interest arbitration award — no ambiguity in collective agreement to warrant application of interest arbitration award; grievance allowed. *Re Kingston General Hospital & Association of Allied Health Professionals*; group grievance, July 23, 1986. Frankel — 9 pages. (133)†

Temporary transfer — temporarily transferred employees not entitled to highest wage rate in new job; grievance dismissed. *Re Alcan Canada Foils & Graphic Communications International Union, Local 500M*; Marshall grievance, July 2, 1986. Barrett — 8 pages. (134)†

Wage progression — wage progression based on percentage of senior salary after general increase; grievance allowed. *Re Babcock and Wilcox Canada & I.F.P.T., Local 164*; Simmons, Papp, Cadieux and Byrne grievance, July 22, 1986. Verity — 21 pages. (135)†

### Welfare Plans

Manner of application of agreed fixed amount payable by employer for additional benefits was determined — fixed amount did not restrict a contribution from employees; determination more akin to an interest arbitration than a rights arbitration. *Re Stratford and District Association for the Mentally Retarded & O.P.S.E.U., welfare benefits referral*, July 17, 1986. Mitchnick — 12 pages. (136)

### Work Assignment

Change in working conditions alleged — not established; grievance dismissed. *Re 547691 Ontario Limited & Hotels, Clubs, Restaurant and Tavern Employees, Local 261*; group grievance, June 30, 1986. Hearn — 7 pages. (137)†

Inspection duties specifically described in another job description does not alter fact that inspection also inherently part of "machinists" job; grievance dismissed. *Re Stelco Inc., Lake Erie Works & U.S.W.A., Local 8782*; Peterson and Palmer grievance, July 11, 1986. Majority: Brandt, Drmaj; dissent: O'Neal — 9 pages. (138)

Transfer of employees to non-union related company — situation analogous to contracting out and in absence of expressed or implied prohibition; not a violation of agreement; grievance dismissed. *Re VanDeHogen Material Handling Inc. & Teamsters, Local 880*; policy grievance, July 7, 1986. Watters — 8 pages. (139)†

Work of grievor's classification done by another employee — isolated incident in special circumstances; no actual assignment of task by employer and grievor not adversely affected; grievance dismissed. *Re CAE Webster Limited & International Molders' and Allied Workers', Local 49*; Kuchocki grievance, July 7, 1986. Weatherill — 8 pages. (140)

### Work Scheduling

Holidays shutdown — extent of entitlement to work during shutdown; grievances allowed in part. *Re Denison Mines Limited & U.S.W.A., Locals 5762 and 5815*; multiple grievances, July 18, 1986. MacDowell — 28 pages. (141)

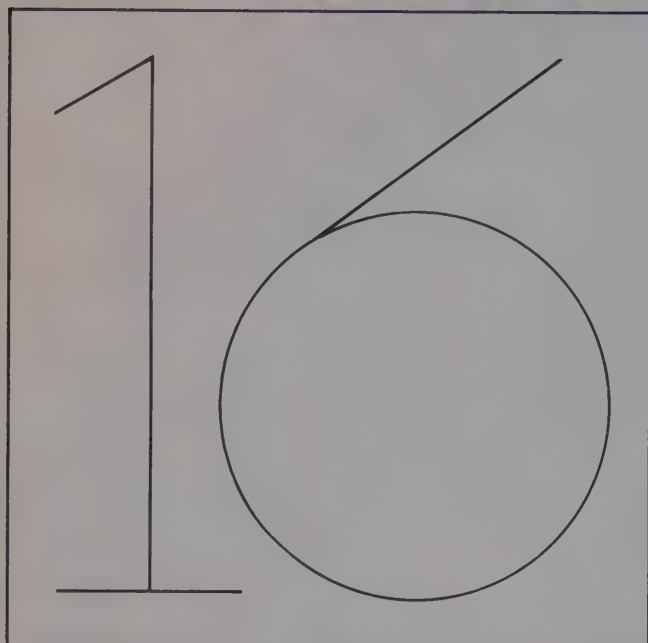
Paid break — employer precluded truck drivers returning to warehouse for lunch — no violation of collective agreement; grievance dismissed. *Re Brewers' Warehousing Co. Ltd. & United Brewers' Warehousing Workers' Provincial Board, Local 278*; policy grievance, July 22, 1986. Hinnegan — 8 pages. (142)†

Shift change — employer entitled to introduce change; grievance dismissed. *Re Elliot Lake, Corporation of the Town of & C.U.P.E., Local 170*; Roberge grievance, July 4, 1986. Brunner, Rex, Neeley — 11 pages. (143)

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. William M. Wrye, Minister  
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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1981, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Arbitrators

The following people have successfully completed the 1985 Arbitrator Development Program and have been added to the Minister of Labour's panel of available arbitrators:

Paul Haeffling, P.O. Box 25, Station "T", Toronto, Ontario, M6B 3Z9; Telephone: (416) 789-2000

Robert D. Joyce, 240 Gerrard Street East, Toronto, Ontario, M5A 2E8; Telephone: (416) 963-8143 or (416) 926-9423

James W. Kilgour, 1008 Oak Meadow Road, Oakville, Ontario, L6M 1J7; Telephone: (416) 825-0445

Michael V. Watters, P.O. Box 7292, Sandwich Post Office, Windsor, Ontario, N9C 3Z1; Telephone: (519) 253-6877



**Grievance Arbitration**

The following awards were filed with the Office of Arbitration during the month of August, 1986. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

**Arbitrability**

Memorandum of settlement relating to prior grievance — grievor entitled to grieve her lay-off. *Re Bulova Watch Company Limited & U.S.W.A.*; *Belcon grievance*, July 25, 1986. O'Shea — 14 pages. (1)

Part-time employee grieved position posted under full-time agreement: past practice irrelevant — two agreements not related — no jurisdiction under part-time agreement to grant redress under full-time agreement. *Re Perley Hospital & C.U.P.E., Local 870; Caminiti grievance*, July 25, 1986. Majority: Simmons, LeBlanc; dissent: Jenkins — 8 pages. (2)

Termination for lack of work — no jurisdiction to deal with alleged unjust dismissal under s.61.5 of Canada Labour Code. *Re Toronto-Dominion Bank & R. Wilkie; Wilkie grievance*. July 29, 1986. P. Picher — 18 pages. (3)

Withdrawal of grievance by union — employer alleges withdrawal constitutes acceptance of employer interpretation — union has right to withdraw without prejudice. *Re Kanata, Corporation of the City of & C.U.P.E., Local 2753; Johnson grievance*, July 30, 1986. Stanley — 4 pages. (4)†

**Bargaining Unit**

Control room operator — no authority to discipline employees — new position fell inside bargaining unit; grievance allowed in part. *Re Galtaco Inc. & International Molders' and Allied Workers' Union, Local 29; control room grievance*, July 3, 1986. M. Picher — 15 pages. (5)

**Call-In**

Skilled trades — incidental overlapping of work not entitling grievor to call-in; grievance dismissed. *Re Kelsey-Hayes Canada Limited, Conroy Division & C.A.W., Local 199; Narhi grievance*, August 22, 1986. McLaren — 7 pages. (6)

Tasks assigned to nurses on call-in duty: nurses expected to perform tasks they would normally perform; grievance allowed in part. *Re Lennox & Addington County General Hospital & O.N.A.; policy and group grievances*, August 13, 1986. Majority: Emrich, Robbins; dissent: Redford — 25 pages. (7)\*

**Classification**

Higher classification claimed — union not prove grievor performed higher category duties; grievance dismissed. *Re Smith Packaging Limited & U.S.W.A.; Pinnock grievance*, August 14, 1986. Freedman — 14 pages. (8)

Job description reflected change in duties and qualifications of computer operator/programmer — higher level of compensation justified; grievance allowed. *Re Niagara, Regional Municipality of & C.U.P.E., Local 1287; policy grievance*, August 1, 1986. Majority: Kennedy, Richardson; dissent: Paterson — 18 pages. (9)

Higher classification claimed — grievor not qualified nor filling duties and responsibilities of maintenance mechanic; grievance dismissed. *Re Intercraft Industries of Canada Limited & United Brotherhood of Carpenters and Joiners of America, Local 2679; Singh grievance*, August 1, 1986. Weatherill — 10 pages. (10)

**Contracting-Out**

Qualified employees accessible to location within economic resources of employer — employer wrongfully contracted-out during opening day ceremonies Expo '86; grievance allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; grievance N173*, June 20, 1986. M. Picher — 24 pages. (11)

Limitation on contracting-out if work is normally performed by bargaining unit members with necessary skills and if practical — grievors unable to establish that limitation applied; grievance dismissed. *Re Algoma Steel Corporation Limited & U.S.W.A., Local 5595; group grievance*, May 15, 1986. Joyce — 8 pages. (12)†

**Damages**

Improper assignment of work to salaried personnel — interest included in amount due. *Re Rexwood Products Limited & Lumber and Sawmill Workers Union, Local 2995; Labour Relations Act, R.S.O. 1980*, May 20, 1986. Majority: Lunney, Fyshe; dissent: Wadge — 10 pages. (13)

**Discharge**

Absence without notification — past record of excessive absenteeism; grievance dismissed. *Re Humber Memorial Hospital & C.U.P.E., Local 1080; Conteduca grievance*, August 15, 1986. Majority: Kruger, Buscis; dissent: Ballantyne — 21 pages. (14)

Absenteeism — medical opinion unfavourable to grievor questioned; no basis for rejecting it; grievance dismissed. *Re Courtice Steel Limited & U.S.W.A., Local 8635; Lesnick grievance*, July 29, 1986. Thorne — 9 pages. (15)†

Absenteeism due to ill health — reinstatement without compensation; grievance allowed. *Re Alcan Canada Foils & Graphic Communications International Union, Local 500M; Henshall grievance*, August 6, 1986. Brent, Sanderson, Ashworth — 11 pages. (16)

Alcoholism — rehabilitation mitigated penalty; reinstatement without compensation. *Re Scarborough, Corporation of the City of & Scarborough Civic Employees Union, (C.U.P.E.), Local 368; Fortier grievance*, July 29, 1986. H.D. Brown — 22 pages. (17)

Alcoholism: reinstatement with conditions. *Re Windsor, Corporation of the City of & Windsor Municipal Employees, (C.U.P.E.), Local 82; Toffolon grievance*, August 8, 1986. Brunner — 16 pages. (18)\*

Alcoholic beverages in grievor's locker — past record of alcohol related offenses — conditional reinstatement; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; Sauer grievance*, August 26, 1986. Burkett — 12 pages. (19)

Assault upon fellow employee alleged — intent to strike not shown; grievor reinstated. *Re Redirack Limited & U.S.W.A., Franks grievance*, August 26, 1986. Boscariol — 6 pages. (20)†

Carelessness: 5-day suspension without pay and reinstatement to be substituted; grievance allowed in part. *Re Universal Grinding Wheel Division of Unicorn Abrasives of Canada & Communications, Electronic, Electrical, Technical and Salaried Workers of Canada, Local 520; Cunningham grievance*, July 31, 1986. Emrich — 10 pages. (21)†

Conviction for careless driving — culminating incident showing just cause; grievance dismissed. *Re Mississauga Concrete Supply & Teamsters Local Union 230; Wilson grievance*, August 19, 1986. Majority: Knopf, McKeown; dissent: Beaulieu — 26 pages. (22)

Dishonesty: fraudulent use of leave alleged — inquiry into facts inadequate — grievor to be reinstated; grievance allowed. *Re Canada Post Corporation & Letter Carriers Union of Canada; Reid grievance*, August 26, 1986. E.B. Jolliffe — 26 pages. (23)

Failure to show up for scheduled shift — absence was not deliberate — reinstatement without compensation; grievance allowed. *Re Fiberglas Canada Inc. (Sarnia Plant) & E.C.W.U., Local 914 (Fiberglas Unit); Bush grievance*, August 13, 1986. Barton — 7 pages. (24)†

Harassment of fellow employee — dismissal inappropriate with both employees responsible for misconduct; grievance allowed. *Re Loeb Inc. (Sudbury) & Warehousemen, Transportation and General Workers Union (R.W.D.S.U.) Local 715; Prinowski grievance*, August 18, 1986. Joyce — 13 pages. (25)†

Insolent behaviour — reinstatement without compensation. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 43; Shannon grievance*, August 5, 1986. Brunner, Milks, Tate — 14 pages. (26)

Insubordination — refusal to mop floors justifying discharge; grievance dismissed. *Re Goodyear Canada Inc. & United Rubber, Cork, Linoleum & Plastic Workers of America, Local 232; Vella grievance*, August 20, 1986. Déom — 13 pages. (27)†

Leaving work without permission — not established on evidence; grievance allowed. *Re St. Mary's General Hospital & O.P.S.E.U.; Hoop grievance*, August 12, 1986. Majority: Burkett, Switzman; dissent: Redford — 16 pages. (28)

Termination of employment prior to completion of contracted apprenticeship period — discharge unjust because illegal; grievance allowed. *Re Vycan Building Products & United Rubber Workers, Local 1105; Lariviere grievance*, August 13, 1986. Hunter — 25 pages. (29)

Theft of scrap — discharge appropriate; grievance dismissed. *Re Woodbridge Foam Corporation & U.A.W., Local 112; Brown grievance*, August 13, 1986. Majority: Kruger, McNaughton; dissent: Murphy — 16 pages. (30)

Theft: misappropriation of funds from hospital vending machines — just cause demonstrated; grievance dismissed. *Re Sunnybrook Hospital & Sunnybrook Hospital Employees' Union, Local 777; Gastis grievance*, June 27, 1986. M. Picher — 22 pages. (31)†

Theft by grievor off-duty and off-work premises but at store belonging to employer's corporate parent: six-month suspension substituted. *Re Jane Parker Bakery Limited & Bakery, Confectionery and Tobacco Workers International Union, Local 264; Nasvoski grievance*, August 1, 1986. Majority: McLaren, Zimmerman; dissent: Dinsdale — 19 pages. (32)\*

### Discipline

Absence without leave: one-day suspension justified. *Re Bonar Packaging Limited & U.S.W.A., Local 8401; Adams grievance*, July 28, 1986. Joyce — 8 pages. (33)†

Carelessness — onus of proof on grievor; grievance dismissed. *Re Overland Express & Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; Carpenter grievance*, August 8, 1986. Majority: Springate, Coltrinari, dissent: Baillargeon — 10 pages. (34)\*

Carelessness alleged — written warning substituted for 1-day suspension. *Re Federal White Cement Limited & United Cement, Lime, Gypsum and Allied Workers, Local D368; Seebohm grievance*, July 2, 1986. Majority: Barton, Tarasuk; dissent: Bentley — 16 pages. (35)

Dishonesty alleged: falsification of attendance records — allegation proven; 10-day suspension appropriate; grievance dismissed. *Re Ontario Hospital Association & Blue Cross Employees Association; Penney grievance*, August 16, 1986. Wilson — 16 pages. (36)†

False pay claim — two and one-half day suspension for false pay claim justified; 2-day suspension for carelessness excessive; grievances dismissed but penalty reduced in second case. *Re Loblaw's Supermarkets Limited & U.F.C.W.U., Local 486; Fitzpatrick and Jones grievances*; August 7, 1986. Little — 22 pages. (37)†

Insubordination alleged following grievor's absence from professional development day and from subsequent appointments set by supervisor to discuss such absence — absence and lack of notice justified on medical grounds — appointments set at time conflicting with working hours for other part-time work; grievance allowed. *Re Ottawa, Scholastic Council of (Adult Day School) & Association of Franco-Ontarien Teachers; Nazaire grievance*, May 20, 1986. Majority: Roach, Grenville-Wood; dissent: Willis — 19 pages. (38) (Award in French)

Insubordination — grievor refusing work assignment because of illness — refusal justified for health and safety reasons; grievance allowed. *Re Rio Algom Limited & U.S.W.A., Local 5980; Whitehead grievance*, July 31, 1986. Brunner — 14 pages. (39)

Insubordination — refusal to follow supervisor's orders: 2-day suspension reasonable; grievance dismissed. *Re Lincoln Place Nursing Home & S.E.I.U., Local 204; Dennis grievance*, August 16, 1986. Wilson — 9 pages. (40)†

Insubordination: refusal to work overtime — overtime voluntary except for specified emergencies; event was emergency; no reasonable personal excuse; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Local 5417; Leduc grievance*, July 31, 1986. Brunner — 11 pages. (41)



Insubordination — volatile context considered in reducing penalty from 1-day suspension to written warning. *Re Mack Canada Inc. & I.A.M.; Welsh grievance*, August 22, 1986. P. Picher — 10 pages. (42)

Intimidation of fellow employees — just cause not shown; grievance allowed. *Re Peachtree Doors Canada & International Molders and Allied Workers Union; Johnson grievance*, August 18, 1986. Samuels — 6 pages. (43)

Negligence: failure to turn on ventilation fan in mine risked health and safety of miners; 3-day suspension appropriate; grievance dismissed. *Re Denison Mines Limited & National Security Officers' Association of Canada; McCourt grievance*, July 8, 1986. M. Picher — 12 pages. (44)

Procedure — failure to give 24-hours notice for disciplinary interview — breach of substantive right of employee; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; Pearce grievance*, August 15, 1986. P. Picher — 23 pages. (45)

Verbal abuse to supervisor — behaviour of both supervisor and grievor not exemplary; grievance allowed. *Re Carewell Easton's Manor Nursing Home & Health, Office and Professional Employees, Local 486; Evoy grievance*, August 18, 1986. Pyle — 22 pages. (46)†

Work performance: 1-day suspension justified; grievance dismissed. *Re Brewers' Warehousing Company Limited & United Brewers' Warehousing Workers Provincial Board; Johnston grievance*, August 13, 1986. McLaren — 12 pages. (47)

### Estoppel

Federation estopped from objecting to conduct of Board of Education — established and consistently applied past practice existed; grievance dismissed. *Re Stormont, Dundas and Glengarry County Board of Education & O.S.S.T.F., Dist. 21; policy grievance*, August 18, 1986. Majority: Gorsky, Tenace; dissent: McNeil — 5 pages. (48)

Long-standing practice of university pro-rating medical and dental benefits for continuing part-time employees unsatisfactory — adequate notice given by union; estoppel not applicable. *Re Carleton University & C.U.P.E. Local 2424; part-time benefits policy grievance*, August 6, 1986. Majority: Verity, Head; dissent: Hunter — 23 pages. (49)

### Grievance Procedure

Submission of written grievance to wrong level of management at first step — grievor referred to such supervisor concerning his complaint — response to grievance containing employer's response to merits with which other managers concurred — waiver of irregularity established; grievance arbitrable. *Re Ottawa, Scholastic Council of (Adult Day School) & Association of Franco-Ontarien Teachers; Nazaire grievance*, June 17, 1986. Majority: Roach, Grenville-Wood; dissent: Willis — 12 pages. (50) (Award in French)

### Holiday Pay

Entitlement where 12-hour shift: paid on basis of 8-hour shift; grievance dismissed. *Re Timmins, Board of Commissioners of Police for the City of & Timmins Police Association; statutory holiday pay grievance*, August 22, 1986. Dempster — 18 pages. (51)

### Hours of Work

Professional development day of 4½ hours scheduled for part-time employee regularly scheduled to work one and one-half hours daily — requirement held to be consistent with terms of collective agreement; individual contract and terms of governing legislation; grievance dismissed. *Re Ottawa, Scholastic Council of (Adult Day School) & Association of Franco-Ontarien Teachers; Nazaire grievance*, June 19, 1986. Majority: Roach, Willis; dissent: Grenville-Wood — 8 pages. (52) (Award in French)

### Illness

Light work position claimed — employer meeting obligations; grievance dismissed. *Re Oshawa General Hospital & O.N.A.; Stevenson grievance*, July 31, 1986. Majority: P. Picher, Cancilla; dissent: O'Neil — 96 pages. (53)

### Job Evaluation

Improper classification alleged — rating of employer found to be incorrect but no change in classification level; grievance dismissed. *Re Carleton University & C.U.P.E., Local 2424; union grievance*, August 20, 1986. H.D. Brown, Millar, Stansel — 11 pages. (54)

Parties disagreeing on appropriate classification for combined position inspector/packer — onus on union to establish new position worth more pay; grievance dismissed. *Re Woodbridge Foam Corporation & U.A.W.; job classification grievance*, August 13, 1986. Majority: Kruger, Sargeant; dissent: Murphy — 5 pages. (55)

Revised job description and continued classification in former category unilaterally decided by company — union entitled to company job evaluation system and criteria used; grievance allowed. *Re Edwards Owen Sound Operations (Unit of General Signal Limited) & U.S.W.A.; grievance no. 86-05*, August 21, 1986. O'Shea — 9 pages. (56)

### Job Posting

Reasonableness of job requirements — grievor did not meet requirements; grievance dismissed. *Re Office Specialty, Division of Hollanding Inc. & International Wood Workers of America; Dyke grievance*, August 5, 1986. Betcherman — 8 pages. (57)†

Reliable attendance required — reasonable requirement; grievance dismissed. *Re Dominion Bridge — Ontario, Unit of AMCA International Limited & U.S.W.A., Local 3390; Wismayer grievance*, July 29, 1986. O'Shea — 12 pages. (58)

### Lay-Off

Employees choosing re-deployment and bumping instead of lay-off not improperly down-graded — employer not in violation of collective agreement; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; expedited lay-off grievance, No. 27*, July 8, 1986. M. Picher — 10 pages. (59)

Employees on leaves of absence to be counted in minimum numbers in bargaining unit — "job-to-person" relationship implicit. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; expedited grievance 1-86*, June 16, 1986. M. Picher — 19 pages. (60)

Permanent full-time and permanent part-time only classifications — grievor correctly bumped to part-time status; grievance dismissed. *Re Beacon Hill Lodges of Canada Ltd. & Service Employees Union, Local 210; Cote grievance*, July 31, 1986. Majority: McLaren, Hussey; dissent: Wolf — 16 pages. (61)

Training period necessary for trucking job — grievor failed to establish "relative equality"; grievance dismissed. *Re Bluebird Bakery Ltd. & Bakery, Confectionery & Tobacco Workers International Union, Local 483; Martone grievance*, July 29, 1986. Majority: Davis, Forbes; dissent: Delvecchio — 9 pages. (62)

Use of overtime following lay-off: amount of overtime not equivalent to full-time position; grievance dismissed. *Re Sunnybrook Hospital & Sunnybrook Hospital Employees Union, Local 777; policy grievance*, August 11, 1986. Baum — 8 pages. (63)†

### Management Rights

New Absenteeism program introduced unilaterally arbitrary distinctions in program discriminatory — removal of supervisor's discretion violation of agreement, only interviews and non-discipline letters allowed — grievance allowed in part. *Re Toronto Electric Commissioners & C.U.P.E., Local 1; policy grievance*, August 5, 1986. Kruger — 24 pages. (64)\*

Maintenance of existing practices — alteration of lunch break policy improper; grievance allowed. *Re McKinlay Transport Ltd. & Teamsters Union, Local 938; Burns et al grievance*, July 22, 1986. Majority: O'Shea, Barclay; dissent: Hawker — 33 pages. (65)\*

### Overtime

Denial of overtime disciplinary in nature — employer ordered to pay overtime; grievances allowed. *Re Christie, Brown & Co. (Division of Nabisco Brands Ltd.) & Bakery, Confectionery & Tobacco Workers International Union, Local 426; Peterson and Walker grievances*, August 11, 1986. Baum — 10 pages. (66)†

Distribution — Company failed to offer alternative classification assignments; grievance allowed. *Re Beaver Lumber Company Limited & Teamsters, Local 419; group grievance*, August 22, 1986. Davis — 7 pages. (67)

Distribution — allocation to be department wide; grievance allowed. *Re Toronto Electric Commissioners & C.U.P.E., Local 1; overtime grievance*, August 28, 1986. Joyce — 8 pages. (68)†

Distribution — grievor not normally performing work; grievance dismissed. *Re Ault Foods Ltd. & Retail, Wholesale & Department Store Union, Local 440*; August 21, 1986. Pyle — 12 pages. (69)†

Distribution — no obligation for overtime to go to same classification; grievance dismissed. *Re Woodbridge Foam Corporation & U.A.W., Local 1934; Reyes grievance*, August 2, 1986. Majority: Gandz, McNaughton; dissent: Murphy — 9 pages. (70)

Entitlement where returning from sick leave — adequate notice of return; grievance allowed. *Re Domtar Inc., Domtar Construction Materials/Gypsum Products & U.S.W.A., Local 14994; Hannigan grievance*, August 18, 1986. O'Shea — 9 pages. (71)

Entitlement: work normally performed by one shift assigned to another — both shifts equally entitled to overtime; grievance dismissed. *Re Beaver Lumber Company Limited & Teamsters Union, Local 419; Hardy grievance*, July 14, 1986. Brandt — 8 pages. (72)

Remedy for improper distribution — in kind remedy not appropriate where period for equalizing overtime opportunities has passed. *Re Butler Metal Products & Butler Polymet Divisions of Guthrie Canadian Investments Ltd. & U.A.W., Local 1780; grievance #M006*, August 19, 1986. Brent — 13 pages. (73)

### Overtime Pay

Part-time employees — entitled to overtime pay for working hours exceeding 25 hours per week; grievance allowed. *Re Northern Telephone Ltd. & Communications Workers of Canada; Lazure and policy grievance*, June 19, 1986. Majority: M. Picher, Herbert; dissent: Winkler — 18 pages. (74)

Shift differential — employer obligated to pay shift differential to shift workers for overtime hours worked — benefits payable for different purposes; grievance allowed. *Re Dow Chemical of Canada Inc. & Energy and Chemical Workers Union, Local 672; Union grievance*, August 19, 1986. Watters — 11 pages. (75)†

### Probationary Employee

Completion of probationary period — employer not obligated to provide shifts for completion of probationary period; grievance dismissed. *Re Crest Hotel & Hotel Employees, Restaurant Employees Union, Local 75; Union policy grievance*, August 15, 1986. Hearn — 10 pages. (76)†

### Procedure

Adjournment — grievor not in fit mental state to participate in hearing; no guarantee of fair representation; adjournment granted. *Re Nabisco Brands Ltd. & U.F.C.W.U., Local 1182-5; Junior grievance*, August 15, 1986. Solomatenko — 8 pages. (77)†

### Promotion

Casual employee selected — criteria is qualifications and seniority, remitted to employer for reconsideration; grievance allowed. *Re Temiskaming Hospital & C.U.P.E., Local 904; Crowther grievance*, August 1, 1986. Majority: Dunn, Turcotte; dissent: Mills — 13 pages. (78)

Qualifications — job evaluation based on evidence prior to trial period improper; grievance allowed. *Re Domtar Inc., Domtar Construction Materials/Gypsum Products & U.S.W.A., Local 14994; Little grievance*, August 14, 1986. O'Shea — 25 pages. (79)†

Qualifications — library secretary vacancy filled with applicant with less seniority and more educational qualifications — abilities and qualifications not relatively equal; grievance dismissed. *Re Hamilton, Board of Education for the City of & Office and Professional Employees International Union, Local 343; Dickson grievance*, August 8, 1986. Majority: Brunner, Pierre; dissent: Brown — 11 pages. (80)



Qualifications — relative equality established where company calling no evidence; grievance allowed. *Re Clare Brothers Ltd. & International Molders & Allied Workers Union, Local 194, Deschamp grievance*, July 29, 1986. Weatherill — 8 pages. (81)

Testing of applicants and relevancy of training period — test reasonable and related to the job; training period not criteria for promotion; grievance dismissed. *Re Witco Chemical Canada Ltd. & Teamsters, Chemical Energy and Allied Workers, Local 132; Prevost grievance*, August 1, 1986. Weatherill — 8 pages. (82)

### Recall

Extent of entitlement — employees entitled to be recalled to higher classification if qualified; grievance allowed in part. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Expedited Issue No. 28*, July 31, 1986. M. Picher — 15 pages. (83)

### Remedies

Failure to comply with previous award — compliance order issued. *Re St. Raphael's Nursing Home & L.D.S.W.U., Local 220; individual and policy grievance*, August 6, 1986. Majority: Swan, Switzman; dissent: Graham — 18 pages. (84)

### Reporting Pay

Wages — refusal to pay except to employees specifically requested to report early — no unilateral right for employer to change agreement — payment ordered for those employees historically required to report early; grievance allowed in part. *Re Peel Regional Board of Commissioners of Police & Peel Regional Police Association; policy grievance*, July 23, 1986. Joyce — 13 pages. (85)

### Res Judicata

Prior award arising from different facts — prior award having general application. *Re USL International Inc. & Canadian Brotherhood of Railway, Transport & General Workers, Canadian Maritime Union, Local 401, Section 151 grievance*, August 26, 1986. Burkett — 15 pages. (86)

### Safety Equipment

Non-payment of safety clothing allowance: past practice to pay only active employees — language does not require employee to be at work; past practice irrelevant; allowance must be paid. *Re Sherman Mine & U.S.W.A., Local 6896; policy grievance*, July 31, 1986. Wilson — 12 pages. (87)†

### Scheduling of Work

Breakdown in plant displaced employees to on-call status: no lay-off occurred; employer not obliged to displace junior employees in other areas; grievance dismissed. *Re Stelco Inc., Hilton Works & U.S.W.A., Local 1005; group grievance*, August 1, 1986. Majority: Brent, Storie; dissent: Marshall — 15 pages. (88)

### Seniority

Accumulation of seniority during periods of lay-off: "continuous service" included lay-off; grievance allowed. *Re Blow Press Ltd. & U.S.W.A., Local 3022; seniority grievance*, August 21, 1986. M. Picher — 11 pages. (89)†

Recall rights ceasing to exist after 1 year — loss of recall rights not resulting in loss of employees' acquired seniority rights; grievance dismissed. *Re Canadian Broadcasting Corporation & C.U.P.E. Broadcast Council; T291 grievance*, July 31, 1986. M. Picher — 33 pages. (90)

### Sick Leave

Entitlement where grievor on work-sharing program — sick leave payments linked only to scheduled hours of work; grievance dismissed. *Re British American Banknote Inc. (Ottawa Division) & Graphic Communications International Union, Local 588 (Lithographers); Saladini grievance*, August 22, 1986. Emrich — 10 pages. (91)\*

Medical certificate not accepted because reason for absence not stated — agreement only requires medical verification of illness; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A., Local 5980; Whitehead grievance*, see (39) *supra*. (92)

### Union Rights

Bulletin board — employer refusal of permission to post notice urging boycott of another employer — permission withheld unreasonably; grievance allowed. *Re Parkwood Hospital & O.N.A., Article M-1 grievance*, August 20, 1986. Majority: H.D. Brown, Robbins; dissent: Heffernan — 21 pages. (93)\*

### Vacations

Bidding rights — bidding by seniority within department; grievance dismissed. *Re Consumers Glass Ltd. & Aluminum, Brick & Glass Workers Union, Local 2206; Land grievance*, July 24, 1986. M. Picher — 12 pages. (94)

Scheduling — grievor required to take allotted vacation: time-off — employer had right to schedule vacation at time convenient to it; grievance dismissed. *Re Burlington Canada Inc. & Labourers International Union, Local 183, Christian and Nagra grievance*, June 27, 1986. Majority: P. Picher, Sargent; dissent: McDonald — 21 pages. (95)

### Vacation Pay

Accrual — Vacation pay improvement calculated by vacation year period rather than from date second year of collective agreement commences; grievance allowed. *Re C & M Products Limited & U.S.W.A., Local 7607; policy grievance*, August 11, 1986. Joyce — 16 pages. (96)†

Laid-off employees recalled entitled to vacation pay; grievance allowed. *Re Northern Telecom Canada Ltd. & Communications Workers of Canada, Local 4; Jagt grievance*, June 30, 1986. M. Picher — 18 pages. (97)

Method of payment — payment by lump sum cheque instead of by post-dated cheques for each week of vacation required; grievance allowed. *Re Standard-Modern Technologies & U.S.W.A., Local 3252; policy grievance*, August 12, 1986. Joyce — 10 pages. (98)†

### Wages

Allowance differential paid to Service Co-ordinators less than Program Co-ordinators — employer free to establish criteria for allowances; grievance dismissed. *Re Niagara College & O.P.S.E.U.; Heron grievance*, August 6, 1986. Majority: Brent, Shields; dissent: Beaulieu — 17 pages. (99)

Laid-off employee claimed entitlement to COLA payment — cease to be employee with lay-off; no entitlement; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Local 414; Dicognito grievance*, August 6, 1986. Majority: Prichard, Blair; dissent: McDonald — 6 pages. (100)

Placement upon salary grid — all experience gained in hospital relating to job of nurse; grievance allowed. *Re Sudbury Algoma Hospital & O.N.A.; Bolton grievance*, August 7, 1986. Majority: Burkett, Richards; dissent: Winkler — 17 pages. (101)

Private ambulance drivers claim parity with Ministry employees — principle of parity accepted; grievance allowed. *Re McKechnie Ambulance Service Inc. & O.P.S.E.U., Local 347; compulsory wage grievance*, July 9, 1986. Majority: Brown, Robbins; dissent: Price — 16 pages. (102)

Recovery of overpayment: employer unilaterally recovering 2 years of overpayment in 5 months; recovery barred because of grievor's detrimental reliance — unilateral recovery violates agreement and *Employment Standards Act*. *Re Ottawa Board of Education & Federation of Women Teachers Association; Johnston grievance*, July 18, 1986. Majority: P. Picher, Sanders; dissent: Chodos — 69 pages. (103)\*

Start rate paid within classification not across classifications — no provision for wage rates being influenced by years of service with employer; grievance dismissed. *Re St. Joseph's Villa & C.U.P.E., Local 2717; Handy grievance*, August 20, 1986. Pyle — 10 pages. (104)†

Bonus — to be awarded if grievor selected the Division Nominee for the 1983 Schenley Award; Division refers to four Eastern teams in the Canadian Football League; grievance allowed. *Re Hamilton Tiger-Cat Football Club & Ross Francis; Francis grievance*, February 8, 1985. Palmer — 4 pages. (105)

Entitlement — refusal of grievor to cross picket line; obligation to compensate the grievor arises when employer let grievor wait outside picket line with no company directive; once grievor decides not to cross after work order no obligation of compensation; grievance allowed in part. *Re Cornwall, Corporation of City of & C.U.P.E., Local 234; O'Neil grievance*, December 12, 1985. Willes — 10 pages. (106)\*

Placement on grid — in transfer from part-time to casual; pay level need not be maintained; grievance dismissed. *Re Temiskaming Hospital & O.N.A.; Locke grievance*, November 25, 1985. Majority: H.D. Brown, Mills; dissent: O'Neil — 13 pages. (107)

Provisions of subsection 12(5) of the *Inflation Restraint Act* do not preclude implementation of salary rate to which grievor entitled pursuant to collective agreement — placement on salary grid not an increase in compensation; grievance allowed. *Re Hamilton, Board of Education for the City of & The Branch Affiliate representing statutory members of the Ontario Public School Teachers' Federation; Sephton grievance*, December 3, 1985. Saltman, Hassell, Koskie — 15 pages. (108)

### Welfare Plans

Drug plan — company claimed financial difficulties unable to pay drug benefits; company in breach of agreement; grievance allowed. *Re Standard Modern Technologies & U.S.W.A.; Drug Card #1-86 grievance*, August 20, 1986. Shime — 4 pages. (109)

### Work Assignment

Employee claimed kilometrage allowance for travelling to assigned duty away from accustomed work — assignment temporary assignment; grievance allowed. *Re Seneca College & O.P.S.E.U., O'Driscoll grievance*, August 12, 1986. Majority: Shime, Kaufman; dissent: Shields — 7 pages. (110)

Seniority — grievor claiming entitlement to extra shift on same day by reason of seniority; employer entitled to consider equitable distribution amongst available employees; grievor not considered available since already scheduled to work same day; grievance dismissed. *Re Trans-Spec Outaouais Ltee & Federation of Public Service Employees; Bergeron grievance*, July 21, 1986. Roach — 9 pages. (Award in French). (111)

Shift preference — seniority not entitling grievor to shift preference; grievance dismissed. *Re Margaret's Fine Foods Ltd. & Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers; Local 647; Khan grievance*, August 13, 1986. Kilgour — 21 pages. (112)†

Temporary employees permitted during "peak vacation"; includes all months temporary employees required for 'replacement purposes'; grievance dismissed. *Re Brampton, Corporation of the City of & Amalgamated Transit Union, Local 1573; union grievance*, July 31, 1986. E.B. Jolliffe — 23 pages. (113)†

Termination of classification of "Changehouse Operator" — company restricted by provision in collective agreement from unilateral termination of job; grievance allowed. *Re Eldorado Resources Ltd. & U.S.W.A.; Local 13173, Changehouse Operator grievance*, August 11, 1986. Hunter — 10 pages. (114)

Buddy system to train new employees in positions of dietary aid, dietary porter, salad technician and cook — no supervisory tasks and work within job descriptions; grievance dismissed. *Re V.S. Services Limited (Food Management Services), Queen Elizabeth Hospital & Workers' Union of Queen Elizabeth Hospital; policy grievance*, December 4, 1985. O'Shea — 13 pages. (115)

Discrimination — grievor moved out of one section of office against her will; movement constituted discrimination against grievor's legitimate union activity; order that she be moved back; grievance allowed. *Re Toronto, Corporation of the City of, & C.U.P.E., Local 79; Zolf grievance*, December 13, 1985. Springate — 40 pages. (116)

Grievor asked to train a part-time employee to fill in for her while on vacation — grievor asserts entitlement to shift premium and to only be replaced by a full-time employee; collective agreement does not support either proposition; grievance dismissed. *Re Toronto General Hospital & C.U.P.E., Local 2001; Holmes grievance*, April 30, 1985. Teplitsky, Switzman, Coupey — 7 pages. (117)

Improper assignment alleged — maintenance personnel assigned to production work; lay-off employees entitled to obtain a position in accordance with seniority and ability without restriction as to department; grievance dismissed. *Re Hiram Walker and Sons Limited & U.A.W., Local 2027; union grievance*, December 17, 1985. H.D. Brown — 38 pages. (118)



Non-bargaining unit employee performing bargaining unit work — declaration company violating collective agreement and declaration work in question belonging to Technical Writer classification; no declaration that employee be put in bargaining unit and union be given full redress. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Local 673; union grievance*, November 4, 1985. Rayner — 13 pages. (119)

Promotion from bargaining unit to non-bargaining unit position — duties as supervisor differ substantially from duties performed inside bargaining unit; not bargaining unit work; position excluded from bargaining unit by virtue of agreement; grievance dismissed. *Re Fleet Industries, a Division of Fleet Aerospace Corporation & I.A.M., Lodge 939; union grievance*, December 20, 1985. Kennedy — 11 pages. (120)

Students performing work while permanent employees on lay-off: temporary employee issue raised two years earlier; no previous lay-off occurring; union unaware of situation earlier; grievance allowed. *Re Atomic Energy of Canada Limited & E.C.W.U., Local 1541; union grievance*, November 22, 1985. Majority: Rayner, More; dissent: Dyer — 9 pages. (121)

Shift assignment changed — collective agreement held to allow change if proper notice given; past practice did not give rise to estoppel; grievance dismissed. *Re North Park Nursing Home & Health Office and Professional Employees, Local 206; Smith grievance*, November 22, 1985. Majority: R.J. Roberts, Graham; dissent: Rudrum — 10 pages. (122)

Supervisor doing small percentage of bargaining unit work — percentage unilaterally increased by employer; employer estopped by past practice; grievance allowed in part; employer ordered to revert to previous percentage. *Re Pinehaven Nursing Home & London and District Service Workers, Local 220; policy grievance*, November 26, 1985. M. Picher, Graham, Herbert — 10 pages. (123)

Transfer of employees between related jobs in a classification not violation of collective agreement; grievance dismissed. *Re Central Stampings Limited & C.L.A.C.; policy grievance*, December 10, 1985. Davis — 24 pages. (124)

Unilateral change of classifications and job duties — held to be management right; posting of vacancies for new classifications required; grievance allowed in part; postings ordered. *Re Scarborough Centenary Hospital Association & C.U.P.E., Local 1320; policy grievance*, February 20, 1985. Palmer — 6 pages. (125)

### Work Scheduling

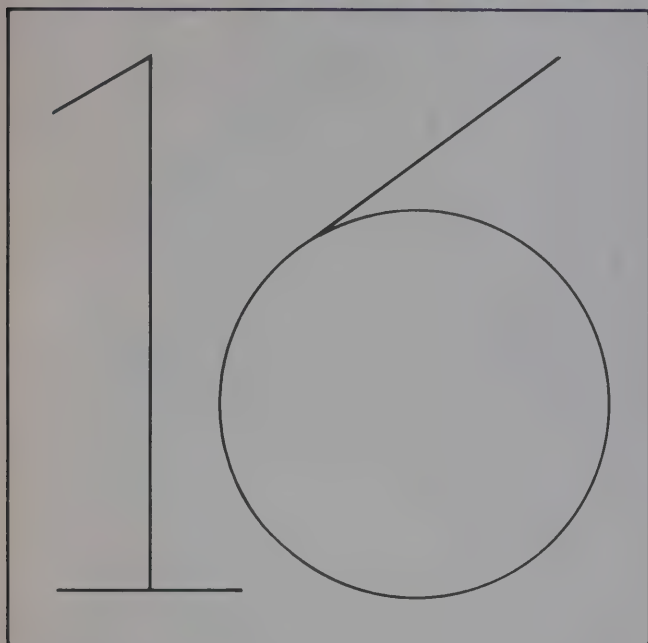
Cancellation of scheduled shift — union alleged improper lay-off; no guarantee of hours — bona fide reasons for decision — no violation; grievance dismissed. *Re Parker-Hannifin (Canada) Inc. & U.S.W.A.; group grievance*, July 30, 1986. Majority: Weatherill, Billings; dissent: James — 7 pages. (126)

Shift preference — company relocated — shift preference by seniority not applied — union and employer agreed before relocation to settle conflicts on basis of seniority; grievance allowed. *Re Caressant Care Nursing Home of Canada Ltd. & C.U.P.E., Local 2037; group grievance*, August 21, 1986. Kilgour — 19 pages. (127)

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# Monthly Bulletin



Ontario Ministry of Labour



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Glenn R. Thompson, Deputy Minister  
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persons involved in labour-management  
arbitrations.

## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of 20 pages, lead time of 48 hours should be allowed. Also, copies of awards dated prior to 1981, which must be retrieved from storage, cannot be supplied in less than one week. All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 25th Floor, Toronto, Ontario, M5G 1S6. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for request for appointment of arbitrator under section 45 of the *Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

The following person has been approved for inclusion on the panel of arbitrators by the *Minister of Labour, The Honourable William M. Wrye*: Mr. Ian Springate, 6578 Treviso Terrace, Mississauga, Ontario, L5N 4H7; Telephone: (416) 858-7756.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of the *Labour Relations Act*.



**Wages**

Alteration of date of scheduled pay increase — violation of agreement; grievance allowed. *Re Metropolitan Toronto, Municipality of & C.U.P.E., Local 79; policy grievance*, June 10, 1986. Kates — 28 pages (1)

Coffee break pay — only to continuing employees entitled to pro-rated benefit; grievance dismissed. *Re Brampton, Corporation of the City of, & A.T.U., Local 1573; policy grievance*, June 6, 1986. Stanley — 8 pages. (2)†

Deduction of alleged over-payments from paycheques — not recoverable by employer since employer's error. *Re Windsor Western Hospital Centre Inc. (I.O.D.E. Unit) & O.N.A.*, June 26, 1986. Majority: Springate, Bartlet; dissent: O'Neil — 55 pages (3)

Implementation of wage schedule: wages based on previous invalid increase — interest arbitrator has jurisdiction to award wages; grievance allowed. *Re St. Raphael's Nursing Home, Durham & London and District Service Workers Union, Local 220; group grievance*, June 2, 1986. Egan — 7 pages. (4)†

Incentive rates — provision in collective agreement aimed at "gradually" eliminating incentive rates administered incorrectly; grievance allowed. *Re Ferranti-Packard Transformers Ltd. & U.S.W.A., Local 5788; Monych grievance*, May 31, 1986. E.B. Jolliffe — 14 pages. (5)†

Rate protection: grievors posted to higher position but never performed duties — rate protected; grievance allowed. *Re Polysar Ltd. & E.C.W.U., Local 914; group grievance*, May 31, 1986. Samuels — 8 pages. (6)†

Trainees — trainees not entitled to wage rates in collective agreement; grievance allowed. *Re Spar Aerospace Limited and U.A.W., Local 112; policy grievance*, May 27, 1986. Teplitsky — 5 pages. (7)

Entitlement: return to work after absence due to injury — unable to perform job assigned; grievor did some work; no basis for denying entitlement to wages; grievance upheld. *Re Motor Wheel Corporation of Canada Ltd. & U.A.W., Local 127; Todino grievance*, April 9, 1986. Hinnegan — 7 pages. (8)

New hire progression — company had no jurisdiction to go beyond words of collective agreement and did not utilize the supplementary help category and in violation of collective agreement; grievance allowed. *Re McDonnell Douglas Canada Ltd. & U.A.W., Local 1967; policy grievance*, March 25, 1986. McKechnie — 13 pages. (9)†

"Overscale" means payment of wages in excess of wage scale in place at the time — payment on basis of interim scale not overscale; adjustment provision for overscale therefore had no applicaiton when new agreement implemented; grievance dismissed. *Re J.F. Sousa Investments Inc. (Swiss Chalet) & Restaurant Employees, Hotel Employees, Local 88; policy grievance*, March 21, 1986. Solomatenko — 11 pages. (10)†

Payment above negotiated rate — no new job class created; employer unilaterally paying extra premium; employer in violation of agreement; grievance allowed. *Re Queen Elizabeth Hospital, Toronto, & C.U.P.E., Local 1156; union grievance*, April 15, 1986. Majority: Kruger, Gardner; dissent: Aiken — 10 pages. (11)

Rates — parity with other telephone workers in area; Bell Canada not used as benchmark in the past; no adjustment made to negotiated wage schedule. *Re Thunder Bay, Corporation of the City of & I.B.E.W., Local 339; wage parity grievance*, March 26, 1986. Majority: Hinnegan, Holt;

dissent: Gareau — 12 pages. (12)

Retroactive wages — interest payments required where retroactive wages not paid within time limit; grievance allowed. *Re St. Joseph's Hospital, Hamilton & O.N.A.; policy grievance*, March 26, 1986. E.B. Jolliffe — 24 pages. (13)†

Retroactive wages — payments late; interest payable; grievance allowed. *Re Stratford General Hospital & O.N.A.; policy grievance*, March 15, 1986. R.J. Roberts — 8 pages. (14)†

Temporary transfer to higher classification — only entitled to higher rate where employee works in higher rated job for more than ten working days during a single upgrade assignment; grievance dismissed. *Re Ryerson Polytechnical Institute & O.P.S.E.U., Local 596; Tushingham grievance*, March 6, 1986. Majority: Burkett, Dixon; dissent: Kaufman — 9 pages. (15)

**Welfare Plans**

Death benefit payment not to be reduced by amount of forfeited workers' compensation due to widow filing civil suit in respect of death — grievance allowed. *Re York Regional Board of Commissioners of Police & York Regional Police Association; grievance relating to widow's pecuniary aid*, May 22, 1986. P.C. Picher — 15 pages. (16)

Permanent partial disability pensions set-off against compensation payments: such set-off viewed as incorrect application of collective agreement — reinstituted past practice of no set-off; grievance allowed. *Re Windsor, Corporation of the City of & C.U.P.E., Windsor Municipal Employees, Local 82; union grievance*, June 24, 1986. Majority: Weatherill, Brophy; dissent: Burnell — 14 pages. (17)

Drug plan benefits — inferior plan provided for in contravention of terms of collective agreement; employer ordered to upgrade plan. *Re Toronto Hydro Electric System & C.U.P.E., Local 1; policy grievance*, June 17, 1986. Déom — 13 pages. (18)†

Drug plan — insurer not required to pay non-prescription drug cost; grievance dismissed. *Re Huronview Home Aged (Corporation of the County of Huron) & Service Employees Union, Local 210; policy grievance*, May 12, 1986. R.J. Roberts — 7 pages. (19)

Insurance benefits — employer only responsible for payment of premiums; grievance dismissed. *Re Neptune Meters Ltd. & U.S.W.A., Local 3813; Abbott grievance*, June 17, 1984. Gorsky — 8 pages. (20)

Life insurance coverage terminated by insurer — company not insurer but agent acting on behalf of employees; no violation of agreement. *Re Canadian Timken Limited & U.S.W.A., Local 4906; North grievance*, May 29, 1986. Samuels — 5 pages. (21)

Change of carrier — parties had agreed that benefits to be provided by specified carriers; parties directed to negotiate a revision of collective agreement. *Re Singer Company of Canada Limited, Controls Division & U.S.W.A., Local 4990; policy grievance*, April 9, 1986. E.B. Jolliffe — 21 pages. (22)†

Dental insurance — obligation on employer to ensure that there was in effect policy of insurance which would provide benefits; not contemplated that employer would act as insurer; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Local 582; Madill grievance*, April 17, 1986. Joyce — 7 pages. (23)†

Entitlement to disability benefits upon reaching retirement age — company having right to retire grievor due to

grievor's age and physical condition; therefore benefits discontinued, grievance dismissed. *Re Hussman Store Equipment Ltd. & U.A.W. Local 397; Heves grievance*, April 9, 1986. H.D. Brown — 13 pages. (24)\*

Reimbursement of legal costs on acquittal charge of sexual assault — no statutory prohibition of payment of costs; grievor entitled to be reimbursed; grievance upheld. *Re Metropolitan Separate School Board & C.U.P.E., Local 1280; Rando grievance*, April 7, 1986. Majority: Swan, Solberg; dissent: Wakely — 33 pages. (25)\*

### Work Assignment

Assignments of work to surplus teachers in teacher placement pool — not based on seniority; grievance dismissed. *Re Scarborough, Board of Education for the City of and O.S.S.T.F., District 16; Johnson grievance*, June 5, 1986. Kennedy, Solberg, Smeenk — 10 pages. (26)

Assisting supervisor — not bargaining unit work; grievances dismissed. *Re Reed Decorative Products Ltd. & C.P.U., Local 304; policy grievance*, April 3, 1986. Majority: Palmer, Salmon; dissent: Paxton — 7 pages. (27)

Duties redistributed and grievor transferred to another position — redistribution part of management rights; grievance dismissed. *Re Walker Exhaust & U.S.W.A., Local 2894; Myers grievance*, April 28, 1986. Palmer — 6 pages. (28)

Employees outside bargaining unit operated forklift on occasional basis but later assigned entire task to exclusion of bargaining unit employees — breach of collective agreement; grievance allowed in part. *Re Dow Chemical Canada Inc. & E.C.W.U., Local 672; Hoad grievance*, May 22, 1986. Majority: P.C. Picher, Switzman; dissent: Churchill-Smith; addendum: Switzman — 25 pages. (29)

Regression temporarily to lower job of sequence — not required in circumstances. *Re Algoma Steel Corporation & U.S.W.A., Local 2251; Hanchuk & Shaughnessy grievance*, June 10, 1986. Majority: Devlin, Forbes; dissent: Woodcock — 12 pages. (30)

Remedy for improper assignment — supplementary award repeated directive to company to reschedule "in their own way". *Re Timmins Public Library & C.U.P.E., Local 2445; policy grievance*, June 16, 1986. Adamson — 2 pages. (31)†

Removal of foreman's job from bargaining unit — assignment of duties of that position to non-bargaining unit member improper; grievance allowed. *Re St. Mary's Paper Inc. & C.P.U., Local 67; Yard Foreman grievance*, June 19, 1986. Devlin, Dixon, Paxton — 5 pages. (32)

Substantial part of vacant position reassigned to non-bargaining unit employees: violation of collective agreement — declaratory award only since situation remedied at time grievance made. *Re Westinghouse Canada Inc. & United Electrical, Radio and Machine Workers of America, Local 565; policy grievance*, June 6, 1986. O'Shea — 19 pages. (33)†

Switchboard work during weekends — quantity of work insufficient to bring weekend operation of hotel switchboards within bargaining unit's jurisdiction; grievance dismissed. *Re Four Seasons Hotel Limited & Hotels, Clubs, Restaurants & Taverns Employees' Union, Local 261; policy grievance*, June 9, 1986. Frankel — 16 pages. (34)†

Use of integrated/extended day legal under *Education Act* regulations — employer actions proper. *Re Toronto Board of Education & Toronto Teachers' Federation; Heritage Language Program grievance*, June 17, 1986. Majority:

Shime, Sopinka; dissent: Paliare — 29 pages. (35)

Creation of new position — special education position a teaching position and establishment by allocation of staffing units from eight secondary schools proper; grievance dismissed. *Re Peterborough County Board of Education and Ontario Secondary School Teachers' Federation, District 18; policy grievance*, March 24, 1986. Marcotte, McNeil, McCleery — 11 pages. (36)

Employer himself performing additional work while employees laid off: in absence of specific prohibition owner/ employer not prevented from performing work; grievance dismissed. *Re North Bay Bus Terminal and A.T.U.; Milne & Langlois grievances*, April 5, 1986. Duchesneau-McLachlan — 17 pages. (37)†

Transfer of teachers from one school to another due to enrolment changes — no obligation on board to consult with branch affiliate; no violation of collective agreement. *Re Niagara South Board of Education & O.S.S.T.F., District 7; policy grievance*, April 3, 1986. McLaren, Thiessen, Riddell — 16 pages. (38)

Job rotation — necessity for first aid persons to be available; fair and reasonable exercise of discretion; grievance dismissed. *Re Consumers Glass Company Limited & Aluminium, Brick and Glass Workers International Union, Local 200; policy grievance*, April 1, 1986. Davis — 15 pages. (39)\*†

Joint liaison committee mandate to modify staffing formula — employer refused to discuss modifications; employer prevented committee from fulfilling its mandate; declaration of breach of collective agreement; grievance upheld. *Re Norfolk County Board of Education & O.S.S.T.F., District 47; group grievance*, January 30, 1986. Majority: Marcotte, partial dissent: McNeil; dissent: Riddell — 25 pages. (40)

Supervisory duties to be included in assigned time — board must change practice; grievance upheld. *Re Kirkland Lake Board of Education & Branch Affiliates of the Ontario Secondary School Teachers' Federation and L'association les enseignants franco-ontariens; federation grievance*, March 31, 1986. Marcotte — 20 pages. (41)

### Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed with the Office of Arbitration.

#### Arbitrability

Jurisdiction of Labour Relations Board under section 124 — nature of work erecting movable displays; operations not within definition of construction industry; applications for arbitration dismissed. *Re Disney Display & Labourers International, Local 506*; February 25, 1986. Mitchnick — 9 pages. (42)

#### Collection

Payment of wages and vacation pay — employer not present at hearing; order to pay issued. *Re Donald Walter Excavating & I.U.O.E., Local 793; union grievance*, November 12, 1985. Knopf, Armstrong, Burnet — 3 pages. (43)

Employer fails to attend hearing — board proceeds in absence; failure to pay according to collective agreement found; grievance allowed. *Re Rollins Steel Services Limited & International Association of Bridge, Structural, and Ornamental Iron Workers, Local 736; union grievance*, December 31, 1985. Franks, Pirrie, Armstrong — 2 pages. (44)



Vacation, Welfare, Pension, and Administration payments — deducted but not forwarded to union; grievance allowed. *Re Edilform Limited and United Brotherhood of Carpenters and Joiners of America, Local 785; union grievance*, March 24, 1986. Springate — 2 pages. (45)

Failure to remit dues for employees: breach of provincial agreement — damages ordered. *Re Drycoustic Construction Limited & International Brotherhood of Painters and Allied Trades, Local 1891; policy grievance*, April 7, 1986. Freedman, Wightman, Armstrong — 4 pages. (46)

### Collective Agreement

Employer bound with its union to provincial collective agreement — union had not abandoned its bargaining rights nor estopped from enforcing them. *Re City Plumbing (Kitchener) Limited & United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 527; union grievance*, November 14, 1985. Satterfield, Bell, O'Keefe — 18 pages. (47)

Provincial collective agreement — company bound by provincial collective agreement and thereby required to utilize union membership for construction labourers at six named projects; grievance allowed. *Re Rino Zanette (1981) Ltd. & Labourers International, Local 607; union grievance*, January 27, 1986. Herman, Murray, Ballentine — 4 pages. (48)

Existence — material misrepresentations not established; employer bound by terms of provincial agreement; board remained seized to deal with grievance; S.124 application stayed. *Re Vincent Spirito and Sons Limited & Ontario Provincial Conference of the International Union of Bricklayers & Allied Craftsmen*, February 12, 1986. Knopf — 6 pages. (49)

### Compensation

Loss of employee's tools — failure by employee to lock-up; delay in filing claim; no breach of collective agreement. *Re Ellis-Don Ltd. & United Brotherhood of Carpenters, Local 27; Kubicz grievance*, April 23, 1986. MacDowell, Wightman, Meagher — 5 pages. (50)

### Contracting Out

Removal of asbestos by subcontractor — agreement not limiting kinds of materials handled during demolition work; employer to compensate union; grievance allowed. *Re Teperman and Sons Inc. & Labourers' International Union of North America, Local 1089; union grievance*, March 27, 1986. Freedman — 9 pages. (51)

Breach of provincial agreement — order to pay damages based on union wages. *Re Brunswick Drywall (Ontario) Ltd. & United Brotherhood of Carpenters, Local 2041; policy grievance*, April 25, 1986. Abella, Wightman, O'Flynn — 5 pages. (52)

### Discipline

Safety infraction alleged — grievor walking steel without tying off safety line; violation of safety policy; suspension warranted; grievance dismissed. *Re Ontario Hydro & International Association of Bridge, Structural and Ornamental Ironworkers, Christie grievance*, April 23, 1986. Howe, Ronson, Rutherford — 8 pages. (53)

### Estoppel

Res judicata — union local applying instead of international union does not allow re-litigation of same issue; grievance dismissed. *Re Montgomery Elevator Co. Ltd. and International Union of Elevator Constructors, Local 50; union grievance*, December 18, 1985. Herman, Murray, Meagher — 7 pages. (54)

Contractors claiming union estopped from unilaterally changing hiring-hall practice to prevent employers from name-hiring from union lists: contractual language giving control of supply of employees to union — employer on notice of union's repudiation of attempt by employers to ground name-hiring in contractual language-elements of estoppel not proven; grievance dismissed. *Re Mechanical Contractors Association of Ontario & United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry, Local 552; employer grievance*, June 4, 1986. MacDowell, Stamp, Rogers — 37 pages. (55)

### Evidence

Extrinsic evidence — company may not introduce evidence which is intended to contradict the clear terms of the collective agreement. *Re Ewing Construction Limited & United Brotherhood of Carpenters and Joiners, Local 27; union grievance*, January 27, 1986. Freedman, Stamp, Ballentine — 5 pages. (56)

### Grievance Procedure

Preliminary objection that grievance not submitted to employer prior to request for arbitration: no compliance with grievance procedure prior to arbitration — no evidence to support lack of notice; grievance procedure not a precondition to arbitration; objections dismissed. *Re Arlington Crane Service Limited & I.U.O.E., Local 793; preliminary objections*, April 25, 1986. Freedman, Murray, Patterson — 8 pages. (57)

### Illness

Refusal to hire — grievor suffered previous back injury — employer insisted on unqualified medical clearance; W.C.B. clearance refused by employer; grievance allowed in part. *Re E.S. Fox Limited, Ontario Sheet Metal and Airhandling Group & Sheet Metal Workers, Local 269; Van Lingen grievance*, April 30, 1986. Mitchnick, Wilson, Kobryn — 20 pages. (58)

### Lay-off

Improper lay-off: immediately prior to scheduled shift; claimed for lack of work at time, but later alleged incompetency and terminated; first reason remains an improper lay-off; grievance allowed. *Re Plibrico (Canada) Ltd. & Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen; De Soto grievance*, December 18, 1985. Springate, Ronson, Kobryn — 3 pages. (59)

### Procedure

Scope of summons: witnesses required to bring documents re continuing breaches and job sites not cited in grievance — restricted to job sites referred to in grievance. *Re Ottawa G.S.B. Construction Company Limited & United Brotherhood of Carpenters and Joiners, Local 2041; union grievance*, December 23, 1985. Springate, Grant, Kobryn — 11 pages. (60)

Threshold issue part of jurisdictional dispute — grievance deferred to I.J.D.B. jurisdictional disputes resolution procedures. *Re E.S. Fox Limited and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, Local 128, and International Association of Bridge, Structural and Ornamental Iron Workers, Local union 721; union grievance*, March 10, 1986. Howe — 2 pages. (61)

Standing — discretion to permit intervention by someone not bound by collective agreement — application for standing as intervener dismissed; grievance dismissed. *Re Ontario Hydro & Ontario Sheet Metal Workers Conference*, May 12, 1986. Gray, Stamp, Ballentine — 25 pages. (62)

Intervenor status requested — union stranger to agreement; rights not affected — application denied. *Re Municipality of Metropolitan Toronto & I.B.E.W., Local 353; policy grievance*, April 24, 1986. Springate, Wilson, Kobryn — 3 pages. (63)

Preliminary objections raised — status of grievor as employee where failure to recall claimed to constitute discharge; *Bradley* notice requirements not met — grievance alleged to be untimely — silence of collective agreement on recall rights precludes arbitrable issue — all preliminary objections dismissed. *Re J.H. Dock & Sons Limited & United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry, Local 787; Sumka grievance*, June 16, 1986. Hughes, Stockton, O'Keeffe — 8 pages. (64)

### Recall

Minimum payment for reporting to work — return to work following strike; union claim of agreement that all employees to return not accepted; extrinsic evidence re agreement considered; no payment owed; grievance dismissed. *Re The Electrical Power Systems Construction Association and Ontario Hydro & United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 527; union grievance*, December 20, 1985. Majority: Freedman, Burnet; dissent: O'Keeffe — 13 pages. (65)

### Travel Allowance

Eligibility — calculation of travel allowance where travel between two "travel-free" zones involved — zones establish boundaries for calculation not exclusion; grievance allowed. *Re Camsyl Insulation Inc. & International Union of Bricklayers, Local 10; group grievance*, April 7, 1986. Satterfield, Stamp, Kobryn — 17 pages. (66)

### Union Security

Company in violation of union security clause — cease and desist order granted along with compensation; grievance allowed. *Re Arlington Crane Service Limited & I.U.O.E., Local 793; policy grievance*, November 28, 1985. Howe, Eayrs, Kobryn — 18 pages. (67)

### Wages

Height pay premium — employees entitled to premium since they worked 18 meters or more above the ground at the edges of the production module; grievance allowed. *Re State Contractors Inc. & I.B.E.W., Local 120; union grievance*, January 20, 1986. Freedman, McMurdo, Lenkinski — 9 pages. (68)

Industrial, Commercial and Institutional (ICI) sector of construction industry — violation of construction agreement by applying maintenance agreement; payment of wage differences ordered. *Re Inscan Contractors (Ontario) Inc. & International Association of Heat and Frost Insulators & Asbestos Workers and the International Association of Heat and Frost Insulators & Asbestos Workers, Local 95*, May 16, 1986. Satterfield, Stamp, Ballentine — 17 pages. (69)

Room and board allowance: retroactive payment claimed from date of hire to 1984 — entitlement to allowance not recognized until 1984 when residence treated as within geographic limits — insufficient reason for delay in claim given — laches applied; grievance dismissed. *Re Ontario Hydro, Darlington G. S. and Electrical Power Systems Construction Association and Ontario Allied Construction Trades Council & L.I.U.N.A., Local 597; Lynch grievance*, July 3, 1986. Mitchnick, Wilson, Armstrong — 6 pages. (70)

### Work Assignment

Presence of a bona fide technological design change allows company to do work itself according to the collective agreement; grievance dismissed. *Re Montgomery Elevator Company Limited & International Union of Elevator Constructors, Local 50; union grievance*, November 14, 1985. Mitchnick, Stamp, Wilson — 9 pages. (71)

Members not in good standing of union hired to perform work covered by provincial agreement — employer obliged by provincial agreement to hire union members — employer to pay wages and benefits which should have been paid in respect of work performed to the union; grievance allowed. *Re D'Orazio Excavating Contractors Limited & Labourers' International Union of North America, Local 506; union grievance*, March 13, 1986. Howe — 4 pages. (72)

Seniority claimed as basis for assignment of mechanics to jobs as helpers in reduced work situation: not lay-off of mechanics — assignments need not be on basis of relative seniority provided assignments made on basis of business exigencies, without bad faith or discrimination — onus on employer on two S.89 complaints not met; McCann and Ferron complaints upheld, S.124 application dismissed. *Re Beckett Elevator Limited and International Union of Elevator Constructors, Local 50; union grievance*, June 25, 1986. Majority: Springate, Stamp, dissent: O'Flynn — 22 pages. (73)

Established local area work practice — evidence not supporting claim that contractors recognized right of local 18 to cut and place lagging in its geographic jurisdiction; grievance dismissed. *Re General Contractors Association of Hamilton et al & Ontario Provincial Council of United Brotherhood of Carpenters and Joiners; union grievance*, July 11, 1986. Satterfield, Stamp, Ross — 19 pages. (74)

### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under the *Hospital Labour disputes Arbitration Act* were filed with the Office of Arbitration during the year, 1986.

*Good Samaritan Nursing Home & C.U.P.E., Local 2250*; December 3, 1985. Majority: Betcherman, Beaulieu; dissent: McGarva — 7 pages.

*Peterborough Civic Hospital & O.P.S.E.U., Local 345*; December 3, 1985. Pyle, Stephenson, Taylor — 14 pages.

*Queensway-Carleton Hospital & C.U.P.E., Local 2875*; December 5, 1985 and February 24, 1986 — Devlin, Mustard, Robbins — 3 pages and 10 pages.

*Nel-Gor Castle Nursing Home (London) & L.D.S.W.U., Local 220*; December 2, 1985. Majority: Betcherman, Beaulieu; dissent: Gordon — 23 pages.

*Madame Vanier Children's Services & O.P.S.E.U.*, December 17, 1985. McLaren, Mustard, McManus — 17 pages.

*Wellesley Hospital & I.U.O.E., Local 796*; December 20, 1985. O'Shea, Storie, Ball — 8 pages.

*Greater Niagara General Hospital & S.E.I.U., Local 204*; November 12, 1985. McKechnie; addendum: Solberg; dissent: Redford — 16 pages.

*Nel-Gor Castle Nursing Home (Carleton Place) & C.U.P.E., Local 2564*; December 20, 1985 — unanimous interim award — 1 page. April 4, 1986 — final award — Fraser; addendum: Switzman; partial dissent: Gordon — 45 pages. June 12, 1986 — addendum to final award: Majority: Fraser, Switzman; did not concur: Gordon — 5 pages.

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*Golden Plough Lodge (Northumberland County) & C.U.P.E., Local 1748*; December 24, 1985 — unanimous interim award. September 29, 1986. Devlin; partial dissents: Billings, Beaulieu — 31 pages.

*Scarborough Centenary Hospital Association & O.P.S.E.U., Local 574*; December 29, 1985 — Majority: Black, Herbert; dissent: Bass — 16 pages.

*Brantwood Manor Nursing Homes Ltd. & C.U.P.E., Local 1712*; January 9, 1986. Majority: Brunner, Beaulieu; dissent: Hammond — 9 pages.

*Metropolitan General Hospital, Hotel Dieu of St. Joseph's Hospital, Windsor, Windsor Western Hospital (I.O.D.E. Unit) and Salvation Army Grace Hospital & S.E.U., Local 210*; January 10, 1986 — Betcherman, Burnell, Pistor — 9 pages.

*The Pines (District Municipality of Muskoka) & O.N.A.*, November 29, 1985. Majority: Burkett, Ballantyne; dissent: Billings — 8 pages. Unanimous supplementary award, September 19, 1986 — 3 pages.

*Humber Memorial Hospital & Association of Allied Health Professionals, Ontario*; January 20, 1986. Majority: Kates, Sprague; addendum: Sprague; dissent: O'Byrne — 30 pages.

*Peel Manor and Sheridan Villa Homes for the Aged (Regional Municipality of Peel) & O.N.A.*, January 23, 1986. Majority: Swan, Ballantyne; addendum: Ballantyne; partial dissent: Filion — 10 pages.

*Grandview Lodge (Corporation of the City of Thunder Bay) & O.N.A.*, January 14, 1986. Majority: H.D. Brown, Mayne; dissent: Holt — 25 pages.

*North York General Hospital & I.U.O.E., Local 796*; January 27, 1986. Majority: O'Shea, Biggin; dissent: Ball — 13 pages. Two Supplementary Awards: April 30, 1986 — 2 pages & August 7, 1986 — 5 pages.

*Scarborough General Hospital & O.P.S.E.U., Local 581*; January 27, 1986. Saltman, Sanderson, Beaulieu — 28 pages.

*Norview Home for the Aged (Reg. Munic. Haldimand-Norfolk) & L.D.S.W.U., Local 220*; January 30, 1986. Betcherman, Borden, Mayne; addendum: Mayne — 8 pages.

*Résidence Prescott & Russell Residence & O.N.A.*, December 27, 1985. Majority: Abbott, Mayne; dissent: Belisle — 19 pages.

*F.J. Davey Home for the Aged & O.N.A.*, January 31, 1986. Saltman — 6 pages.

*Spencer Brothers Nursing Home & O.N.A.*, February 4, 1986. Devlin, Stapleton, Paliare; addendum: Paliare — 27 pages.

*Sara Vista Nursing Home & H.O.P.E., Local 206*; February 7, 1986. Majority: Gorsky, Robbins; addendum: Robbins; dissent: Churchmuch — 74 pages.

*Collingwood General & Marine Hospital & S.E.U., Local 204*; January 28, 1986. Majority: Swan, Solberg; dissent: Redford — 25 pages. Supplementary Award — December 1, 1986 — 6 pages.

*Strathaven Nursing Home Ltd. & C.U.P.E., Local 2225*; February 6, 1986. Majority: Betcherman, Switzman; addendum: Switzman; partial dissent: Ellis — 28 pages.

*Kingston General Hospital & Association of Allied Health Professionals, Ontario*; February 14, 1986. Scott; partial dissent: Mustard; dissent: Sprague — 21 pages.

*Glen Stor Dun Lodge (United Counties of Stormont, Dundas & Glengarry) & O.N.A.*, January 31, 1986. Majority: H.D.

Brown, Mayne; partial dissent: Whittaker — 14 pages.

*Frost Manor Nursing Home & C.U.P.E., Local 1909*; February 21, 1986. Majority: Fraser, Switzman; addendum: Switzman; dissent: Graham — 30 pages.

*The Queensway-Carleton Hospital & C.U.P.E., Local 2875*; February 24, 1986. Devlin, Mustard, Robbins — 10 pages.

*Louise Marshall Hospital, Mount Forest & L.D.S.W.U., Local 220*; February 21, 1986. Majority: Kates, Robbins; addendum: Robbins; partial dissent: Redford — 17 pages.

*Kingston Regional Ambulance Service & O.P.S.E.U., Local 462*; February 25, 1986. Fraser, Asselstine, Beaulieu — 11 pages.

*V.S. Services Ltd. & S.E.I.U., Local 204*; January 31, 1986. Majority: P. Picher, Solberg; dissent: Steeves — 19 pages.

*Au Chateau Home for the Aged & O.N.A.*; March 5, 1986. Betcherman, Bass, Mayne; dissent: Mayne — 8 pages.

*Extendicare Limited (Oshawa) & C.U.P.E., Local 1586*; March 7, 1986. Scott; addendum: McGarva; partial dissent: Switzman — 30 pages.

*Streamway Villa Nursing Home (Carewell Corporation) & C.U.P.E., Local 2225*; March 10, 1986. Baum, Churchmuch, Beaulieu — 7 pages.

*Cambridge Country Manor & S.E.U., Local 204*; March 5, 1986. Majority: McKechnie, Solberg; dissent: Chauvin — 17 pages.

*Extendicare Sudbury/York; Extendicare Timmins & O.N.A.*, March 24, 1986. Scott; dissents: McGarva, McIntyre — 19 pages.

*Etobicoke General Hospital & Association of Allied Health Professionals, Ontario*; March 24, 1986. Scott, Brady; partial dissent: Brady; dissent: Moss — 21 pages.

*Sensenbrenner Hospital, Kapuskasing & O.P.E.I.U., Local 166*; March 14, 1986. Majority: Pyle, Redford; Beaulieu — 12 pages.

*Prince Edward County Memorial Hospital & S.E.U., Local 663*; March 19, 1986. McLaren, Rickard, MacDonald — 20 pages.

*St. Mary's Hospital (Kitchener) & L.D.S.W.U., Local 220*; March 25, 1986. Betcherman; dissent: Redford; partial dissent: Switzman — 18 pages.

*La Chaumiere Rest Home Ltd. & S.E.U., Local 210*; March 25, 1986. Hearn, Saxe, Solberg — 13 pages. Supplementary Award: September 2, 1986 — 4 pages.

*Niagara Homes for the Aged & O.N.A.*, March 10, 1986. Majority: H.D. Brown, Mayne; dissent: Barley — 12 pages.

*Fairhaven Home for Senior Citizens & O.N.A.*, February 12, 1986. McCaughey, Smith, McIntyre — 9 pages.

*St. Mary's General Hospital & L.D.S.W.U., Local 220*; July 12, 1985. Majority: Swan, Switzman; dissent: Cook; addendum: Swan — 43 pages.

*Participating Nursing Homes (10) & L.D.S.W.U., Local 220*; March 19, 1986. Majority: McKechnie, Shibley; dissent: Robbins; addendum: Shibley — 48 pages.

*Nel-Gor Castle Nursing Home (Carleton Place) & C.U.P.E., Local 2564*; April 4, 1986. Majority: Fraser, Switzman; addendum: Switzman; partial dissent: Gordon — 50 pages.

*Willows Estate Nursing Home & C.U.P.E., Local 2863*; April 15, 1986. Majority: Baum, Robbins; addendum: Robbins; dissent: Graham — 29 pages.

*Ongwanada Hospital Penrose Division & O.P.S.E.U., Local 433 (Full-Time);* March 31, 1986. Willes, Abbass, Taylor — 12 pages.

*Dr. John Dearness Home for Elder Citizens (Corporation of the City of London) & L.D.S.W.U., Local 220 (Full & Part-Time);* April 18, 1986. R.J. Roberts, Coups, Robbins; addendum: Coups — 20 pages. Supplementary Award, October 31, 1986. Majority: Roberts, Coups; dissent: Robbins — 11 pages.

*Cottage Hospital (Uxbridge) & O.P.S.E.U., Local 302 (Paramedical Unit);* April 25, 1986. Majority: Waisglass, Kaufman; dissent: Gillis — 5 pages.

*Victoria Residence (Corporation of the City of Chatham) & C.U.P.E., Local 12 (Full-Time and Part-Time);* May 1, 1986. Majority: Waisglass, Robbins; addendum: Robbins; dissent: Bass — 7 pages.

*Manitoulin Health Centre & O.P.S.E.U., Local 627;* May 1, 1986. Pyle, Redford, Taylor — 19 pages.

*Marshall Gowland Manor, Corporation of the City of Sarnia & O.N.A.,* April 22, 1986. Majority: Emrich, Ballantyne; dissent: Baker — 20 pages.

*Fairhaven Home for Senior Citizens & C.U.P.E., Local 131;* May 2, 1986. McCaughey, Coghlan, Robbins — 17 pages.

*Sidbrook Private Hospital & C.U.P.E., Local 2225;* May 2, 1986. Joyce; dissents: Graham, Robbins — 45 pages.

*Versa-Care Centre of Owen Sound & O.N.A.,* May 14, 1986. Waisglass; dissents: Mayne, McGarva — 8 pages.

*Marnwood House Nursing Home (Bowmanville) & C.U.P.E., Local 2225;* May 21, 1986. Mancini; dissents: Graham, Beaulieu — 8 pages.

*Carleton Place & District Memorial Hospital & I.U.O.E.,* May 16, 1986. Emrich, Redford, Sullivan — 6 pages.

*Cottage Hospital (Uxbridge) & O.P.S.E.U., Local 302;* May 20, 1986. Boscariol; dissents: Gillis; Kaufman — 18 pages.

*Coleman Health Care Centre & O.N.A.,* May 22, 1986. Hopper, Bass, Switzman — 10 pages.

*Beacon Hill Lodges of Canada Ltd. & S.E.U., Local 210;* May 23, 1986. O'Shea; dissents: Sargeant, Borg — 29 pages.

*York Finch General Hospital & S.E.I.U., Local 204;* May 13, 1986. Majority: McKechnie, Redford; addendum: Redford; dissent: Solberg — 7 pages.

*Marycrest Home for the Aged & O.N.A.,* May 26, 1986. Burkett, Bass, Ballantyne — 10 pages.

*Toronto General Hospital & C.U.P.E., Local 2001;* May 30, 1986. Burkett, Coupey, Mayne — 9 pages.

*Sunbeam Residential Development Centre & O.N.A.,* June 5, 1986. Hopper, Carrier, Ballantyne — 4 pages.

*Riverside Hospital of Ottawa & C.U.O.E., Local 111;* June 3, 1986. Emrich, Kearney, Redford; addendum: Redford — 18 pages.

*Sunnybrook Medical Centre & I.U.O.E., Local 796;* June 5, 1986. Parker, Bass, Walker; addendum: Bass — 6 pages.

*Halton Centennial Manor (Regional Municipality of Halton) & O.N.A.,* June 12, 1986. Majority: Devlin, Paliare; addenda: Devlin, Paliare; partial dissent: Billings — 37 pages.

*Scarborough General Hospital & I.U.O.E., Local 796;* June 17, 1986. Hopper, Biggin, Sullivan — 3 pages.

*Macassa Lodge (Regional Municipality of Hamilton-Wentworth) & C.U.P.E., Local 167;* June 24, 1986. Hopper, Milks, Maddison — 4 pages.

*Komoka Nursing Home & L.D.S.W.U., Local 220;* May 27, 1986. Majority: McKechnie, Robbins; addendum: Robbins; dissent: Graham — 13 pages.

*Parry Sound District General Hospital & S.E.U., Local 478;* June 26, 1986. Majority: McLaren, Solberg; dissent: Budd — 28 pages.

*Brouillette's Manor Limited & O.N.A.,* July 4, 1986. Majority: Samuels, McIntyre; addendum: McIntyre; partial dissent: Bartlet — 35 pages.

*Thamesview Lodge, Corporation of the County of Kent & S.E.U., Local 210;* July 7, 1986. McLaren, Simpson, Vellinga — 24 pages. Supplementary Award: August 8, 1986 — 2 pages.

*Oakridge Villa Nursing Home & O.N.A.,* July 3, 1986. Majority: Teplitsky, McGarva; dissent: Mayne — 5 pages.

*Guildwood Villa Nursing Home & O.N.A.,* July 3, 1986. Teplitsky, McGarva, Mayne — 8 pages.

*Parry Sound District General Hospital (Paramedical Unit) & S.E.U., Local 478;* July 15, 1986. McLaren, Budd, Solberg — 22 pages. Supplementary Award: October 3, 1986 — 2 pages.

*Marianhill Home for the Aged (Pembroke) & C.U.P.E., Local 2764;* June 16, 1986. Majority: Swan, Beaulieu; dissent: Cyr — 32 pages.

*Bestview Health Care Centre, Newmarket & O.N.A.,* July 14, 1986. Majority: Swan, McIntyre; addendum: McIntyre; dissent: Perkins — 16 pages.

*Bonnechere Manor & O.N.A.,* July 21, 1986. Majority: Brunner, Switzman; dissent: Weir — 13 pages. Supplementary Award — September 4, 1986 — 5 pages.

*St. Vincent de Paul Hospital (Kingston) & C.U.P.E., Local 2491;* July 14, 1986. Emrich, Redford, Beaulieu — 15 pages.

*St. Joseph's Villa & C.U.P.E., Local 2717;* June 16, 1986. Majority: Abbott, Robbins; dissent: Cyr — 29 pages.

*Sunnyside Home, Regional Municipality of Waterloo & L.D.S.W.U., Local 220;* July 5, 1986. Waisglass, Hyde, Stewart — 5 pages.

*Alexandra Marine & General Hospital & S.E.U., Local 210;* June 10, 1986. Majority: McLaren, Winkler; dissent: Borg — 10 pages.

*Salvation Army Grace Hospital & S.E.U., Local 210;* July 25, 1986. Baum; dissents: Burnell; Solberg — 15 pages.

*Garson Manor Nursing Home & C.U.P.E., Local 2219;* July 17, 1986. Majority: Duchesneau-McLachlan, Graham; dissent: Robbins — 11 pages.

*Birchwood Terrace Nursing Home & Menistic Manor Nursing Home & U.F.C.W., Local 409;* July 31, 1986. Hopper; dissents: Gatien, Peters — 8 pages.

*Edward Street Manor Nursing Home & O.N.A.,* August 12, 1986. Majority: Emrich, Switzman; dissent: Mustard — 27 pages.

*Aylmer Nursing Home Limited & L.D.S.W.U., Local 220;* August 14, 1986. Hopper, Coups, Stewart — 27 pages.

*Cobourg District General Hospital & O.P.S.E.U., Local 344;* July 21, 1986. O'Shea, Redford, Taylor — 7 pages.



*Ottawa Civic Hospital & Association of Allied Health Professionals: Ontario; Interim Award: August 27, 1986.*  
Saltman, Mustard, Moss — 3 pages.

*Little's Nursing Home (Essex) & C.U.P.E., Local 1370; August 29, 1986.* H.D. Brown, Laforet, Robbins — 14 pages.

*Salvation Army Grace General Hospital & Association of Allied Health Professionals, Ontario; September 3, 1986.*  
Majority: Pyle, Stansel; dissent: Moss — 28 pages.

*Prince Edward County Memorial Hospital & S.E.U., Local 663; September 8, 1986.* Kates, Solberg, Leblanc — 4 pages.

*H.J. McFarland Memorial Home & O.N.A., September 9, 1986.* Majority: Boscaroli, Mayne; addendum: Mayne; dissent: Bateman — 18 pages.

*Rideaucrest Home for the Aged & O.N.A., Local 184; September 2, 1986.* Majority: McKechnie, McIntyre; dissent: Milks — 27 pages.

*Hyland Crest Senior Citizens' Home & C.U.P.E., Local 1225; September 3, 1986.* McKechnie, Hynes, Solberg — 11 pages.

*Toronto Western Hospital & C.U.P.E., Local 1774; September 22, 1986.* Joyce; dissents: Gaten, Switzman — 22 pages.

*Golden Plough Lodge (Northumberland County) & C.U.P.E., Local 1748; September 29, 1986.* Devlin; partial dissents: Billings, Beaulieu — 31 pages.

*St. Mary's General Hospital (Kitchener) & L.D.S.W.U., Local 220; September 17, 1986.* Waisglass, Redford, Stewart — 6 pages.

*Golden Manor Home for the Aged (City of Timmins) & C.U.P.E., Local 1140; October 8, 1986.* Majority: Joyce, Rukavina; dissent: Beaulieu — 19 pages.

*Public General Hospital, Chatham & S.E.U., Local 210; October 6, 1986.* Majority: Hopper, Stewart; partial dissent: Foulds — 6 pages.

*Salvation Army, A.R. Goudie Eventide Home, Kitchener & L.D.S.W.U., Local 220; October 8, 1986.* Joyce; dissents: Thorup, Switzman — 30 pages.

*Participating Hospitals and C.U.P.E., & 68 Local Unions; October 10, 1986.* Burkett; dissents: Filion, Herbert — 76 pages.

*Participating Hospitals & S.E.I.U., Locals: 183, 204, 268, 478, 532 & 777; October 10, 1986.* Burkett; dissents: Filion, Sack — 67 pages.

*Belleville General Hospital & S.E.I.U., Local 663; October 6, 1986.* Majority: McKechnie, Kort; addendum: Kort; dissent: Solberg — 17 pages.

*Participating Hospitals & C.U.P.E., (Local Issues). Board: Stanley, Wakely, Herbert (Awards on 13 Hospitals).*

*Louise Marshall Hospital & O.N.A., October 21, 1986.* Majority: Emrich, Mayne; dissent: Redford — 15 pages.

*St. Mary's Hospital, London & L.D.S.W.U., Local 220; October 17, 1986.* Waisglass, McDermott, Stewart — 5 pages.

*Bonnechere Manor, County of Renfrew & C.U.P.E., Local 1508; October 17, 1986.* Devlin, Weir; partial dissent: Switzman — 24 pages.

*Freeport Hospital & L.D.S.W.U., Local 220; October 24, 1986.* Hopper, Filion; addendum: Filion; dissent: Switzman — 27 pages.

*St. Williams Nursing Home & L.D.S.W.U., Local 220; October 24, 1986.* Boscaroli, O'Byrne, Stewart — 26 pages.

*Great War Memorial Hospital of Perth District & O.P.S.E.U., Local 466; September 30, 1986.* Majority: Grant, Sheppard; dissent: Redford — 11 pages.

*Participating Hospitals (40 in number) & O.P.S.E.U., Interim Award, October 24, 1986.* Pyle, Winkler, Taylor — 2 pages.

*Strathroy Nursing Homes Ltd. & L.D.S.W.U., Local 220; October 29, 1986.* Majority: H.D. Brown, Switzman; addendum: Switzman; dissent: Coups — 18 pages.

*Central Park Lodges, Kitchener & L.D.S.W.U., Local 220; November 1, 1986.* Majority: Waisglass, MacDermid; dissent: Stewart — 13 pages.

*Marshall Gowland Manor (Sarnia) & L.D.S.W.U., Local 220; October 27, 1986.* R.J. Roberts, Drmaj, Robbins — 25 pages.

*Gateway Haven Home for the Aged & O.N.A., November 1, 1986.* Majority: Fraser, Switzman; addendum: Switzman; partial dissent: Robertson — 28 pages.

*Hotel-Dieu of St. Joseph's, London & S.E.U., Local 210; November 10, 1986.* Majority: Betcherman, Burnell; dissent: Solberg — 6 pages.

*Participating Hospitals & O.N.A., November 7, 1986.* Majority: Simmons, Winkler; addendum: Simmons; dissent: Mayne — 60 pages.

*Parry Sound General Hospital & C.U.O.E., August 2, 1986.* Samuels, Finegan, Harrison — 3 pages.

*St. Joseph's Villa & C.U.P.E., Local 1404; November 14, 1986.* Brunner, Cook, Maddison — 13 pages.

*Ottawa-Carleton Home for the Aged & O.N.A., November 18, 1986.* Majority: Thorne, Cameron; dissent: Mayne — 11 pages.

*Sudbury-Algoma Hospital & O.P.S.E.U., Local 666; November 26, 1986.* Majority: Brunner, Switzman; addendum: Switzman; partial dissent: Rogers — 22 pages.

*Clinton Public Hospital & S.E.U., Local 210; December 2, 1986.* Hopper; dissents: Redford, Stewart — 7 pages.

*Golden Manor Home for the Aged & O.N.A., October 30, 1986.* Majority: Teplitsky, Rukavina; partial dissent: Switzman — 5 pages.

*Maplewood Nursing Home Ltd. & L.D.S.W.U., Local 220; December 12, 1986.* Hopper, Gaten, Stewart — 31 pages.

*Pioneer Manor Home for the Aged & C.U.P.E., Local 148; December 10, 1986.* Knopf, Baldwin, Pharand — 12 pages.

*Brantwood Manor Nursing Homes Limited & O.N.A., November 28, 1986.* Majority: H.D. Brown, Mayne; partial dissent: Hammond — 34 pages.

*Hawkesbury Villa & C.U.P.E., December 3, 1986.* Waisglass, Stapleton, Beaulieu — 5 pages.

*Hotel-Dieu of St. Joseph Hospital, Windsor & C.U.O.E., Local 100; December 17, 1986.* Majority: McKechnie, Baillargeon; partial dissent: Wakely — 9 pages.

*Fairview Manor, Almonte & Lanark Lodge, Perth & C.U.P.E., Locals: 3022 & 2976; December 19, 1986.* Knopf, Graham, Robbins — 17 pages.

*Extendicare Health Service Inc. (Sudbury, Timmins, Kapuskasing, Hearst, & Tri-Town (Haileybury)) & C.U.P.E., Locals: 1182, 1771-C, 1771-B, 1771-A & 2951; December 24, 1986.* Baum; partial dissents: Budd, Robbins — 28 pages.











